

CONTENTS

Title	Page
63. Revenue and Taxation	1
64. Sales	639
65. Soldiers and Sailors	643
66. State Charitable Institutions	663
Index	755



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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
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LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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TITLES 63-66

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PUBLISHER'S NOTE

Since the publication in 2000 of former Replacement Titles 63 to 66 many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, Replacement Titles 63 to 66 are issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of April 5, 2007. These cases will be printed in the following reports:

Idaho Reports

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law."

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952

1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971
1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997

1998	March 23, 1998
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007

TABLE OF CONTENTS

TITLE 63

REVENUE AND TAXATION

Chapter	Sections
1. Department of Revenue and Taxation	§§ 63-161 — 63-123
2. Definitions — General Provisions	§§ 63-201 — 63-220
3. Assessment of Real and Personal Property	§§ 63-301 — 63-317
4. Appraisal, Assessment and Taxation of Operating Property	§§ 63-401 — 63-411
5. Equalization of Assessments	§§ 63-501 — 63-517
6. Exemptions from Taxation	§§ 63-601 — 63-610
7. Property Tax Relief	§§ 63-701 — 63-711
8. Levy and Apportionment of Taxes	§§ 63-801 — 63-813
9. Payment and Collection of Property Taxes	§§ 63-901 — 63-910
10. Collection of Delinquency on Real, Personal and Operating Property	§§ 63-1001 — 63-1015
11. Seizure and Sale of Personal Property for Taxes	§§ 63-1101 — 63-1141
12. Settlement of Revenue Officers	§§ 63-1201 — 63-1224
13. Miscellaneous Provisions of Tax Law	§§ 63-1301 — 63-1314
14. Enforcement — Penalties	§§ 63-1401 — 63-1405
15. Collection of Taxes from Public Works Contractors	§§ 63-1501 — 63-1505
16. Prepayment of Taxes	§§ 63-1601 — 63-1612
17. Taxation of Forest Lands and Forest Products	§§ 63-1701 — 63-1708
18. Moneyed Capital in Competition with Banks — Assessment	[Repealed]
19. Equalization of Assessment of Personal Property	[Repealed]
20. Seizure and Sale of Personal Property for Taxes	[Repealed]
21. Settlement of Revenue Officers	[Repealed]
22. Miscellaneous Provisions of Tax Law	[Repealed]
23. License Taxes	§§ 63-2301 — 63-2314
24. Fuels Tax	§§ 63-2401 — 63-2444
25. Cigarette and Tobacco Products Taxes	§§ 63-2501 — 63-2565
26. County Sales Tax	§§ 63-2601 — 63-2626
27. License Tax on Electricity	§§ 63-2701 — 63-2711
28. Taxation of Profits of Mines	§§ 63-2801 — 63-2811
29. The Idaho Corporate Headquarters Incentive Act of 2005 ...	§§ 63-2901 — 63-2910
30. Income Tax	§§ 63-3001 — 63-3089
31. Anticipation of Revenue by Taxing Districts	§§ 63-3101 — 63-3108
32. Anticipation of Revenue by State	§§ 63-3201 — 63-3206
33. Anticipation of Revenue by Counties	[Repealed]
34. Collection of Taxes and License Fees	§§ 63-3401 — 63-3409
35. Cooperative Electrical Associations — Taxing Gross Earnings ...	§§ 63-3501 — 63-3506
36. Sales Tax	§§ 63-3601 — 63-3641
37. Interstate Compact	§§ 63-3701 — 63-3709
38. Board of Tax Appeals	§§ 63-3801 — 63-3815
39. Tax on Newly Constructed and Occupied Residential and Commerical Structures	[Repealed]
40. Taxpayers' Bill of Rights	§§ 63-4001 — 63-4011
41. Special District Dissolution Act	§§ 63-4101 — 63-4106
42. Illegal Drug Stamp Tax Act	§§ 63-4201 — 63-4211
43.	[Reserved]
44. The Idaho Small Employer Incentive Act of 2005	§§ 63-4401 — 63-4409

TITLE 64

SALES

Chapter	Sections
1. Uniform Law — Formation of the Contract	[Repealed]
2. Uniform Law — Transfer of Property as Between Seller and Buyer	[Repealed]
3. Uniform Law — Performance of the Contract	[Repealed]
4. Uniform Law — Rights of Unpaid Seller Against the Goods	[Repealed]
5. Uniform Law — Actions for Breach of the Contract	[Repealed]
6. Uniform Law — Interpretation	[Repealed]
7. Bulk Sales Law	[Repealed]
8. Conditional Sale Contracts	[Repealed]
9. Assignment of Accounts Receivable	[Repealed]
10. Uniform Trust Receipts Act	[Repealed]

TITLE 65

SOLDIERS AND SAILORS

Chapter	Sections
1. Servicemen's Memorials	§§ 65-101 — 65-106
2. Division of Veterans Services — Veterans Affairs Commission ..	§§ 65-201 — 65-208
3. Official Services for Veterans	§§ 65-301 — 65-303
4. Grand Army Headquarters	[Repealed]
5. Rights and Privileges of Veterans	§§ 65-501 — 65-515
6. Service Officers for Aid of Veterans	§§ 65-601, 65-602

TITLE 66

STATE CHARITABLE INSTITUTIONS

Chapter	Sections
1. State Hospitals	§§ 66-101 — 66-119
2. Insane Asylums	[Repealed]
3. Hospitalization of Mentally Ill	§§ 66-301 — 66-364
4. Treatment and Care of the Developmentally Disabled	§§ 66-401 — 66-414
5. State Asylum and Sanitarium Fund for Patients	§§ 66-501 — 66-503
6. Declarations for Mental Health Treatment	§§ 66-601 — 66-613
7. Commitment to Idaho State School and Colony	[Repealed]
8. Sterilization Law	[Repealed]
9. Idaho Veterans' Home	§§ 66-901 — 66-907
10. Idaho Tuberculosis Hospital	§§ 66-1001 — 66-1007
11. Funds of Charitable Institutions	§§ 66-1101 — 66-1108
12. Interstate Compact on Mental Health	§§ 66-1201 — 66-1205
13. Idaho Security Medical Program	§§ 66-1301 — 66-1318

TITLE 63

REVENUE AND TAXATION

CHAPTER.

1. DEPARTMENT OF REVENUE AND TAXATION, §§ 63-100 — 63-123.
2. DEFINITIONS — GENERAL PROVISIONS, §§ 63-201 — 63-220.
3. ASSESSMENT OF REAL AND PERSONAL PROPERTY, §§ 63-301 — 63-317.
4. APPRAISAL, ASSESSMENT AND TAXATION OF OPERATING PROPERTY, §§ 63-401 — 63-411.
5. EQUALIZATION OF ASSESSMENTS, §§ 63-501 — 63-517.
6. EXEMPTIONS FROM TAXATION, §§ 63-601 — 63-628.
7. PROPERTY TAX RELIEF, §§ 63-701 — 63-721.
8. LEVY AND APPORTIONMENT OF TAXES, §§ 63-801 — 63-813.
9. PAYMENT AND COLLECTION OF PROPERTY TAXES, §§ 63-901 — 63-910.
10. COLLECTION OF DELINQUENCY ON REAL, PERSONAL AND OPERATING PROPERTY, §§ 63-1001 — 63-1015.
11. SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES, §§ 63-1101 — 63-1141.
12. SETTLEMENT OF REVENUE OFFICERS, §§ 63-1201 — 63-1224.
13. MISCELLANEOUS PROVISIONS OF TAX LAW, §§ 63-1301 — 63-1314.
14. ENFORCEMENT — PENALTIES, §§ 63-1401 — 63-1405.
15. COLLECTION OF TAXES FROM PUBLIC WORKS CONTRACTORS, §§ 63-1501 — 63-1505.
16. PREPAYMENT OF TAXES, §§ 63-1601 — 63-1612.
17. TAXATION OF FOREST LANDS AND FOREST PRODUCTS, §§ 63-1701 — 63-1708.
- 18 — 22. [REPEALED.]
23. LICENSE TAXES, §§ 63-2301 — 63-2314.
24. FUELS TAX, §§ 63-2401 — 63-2444.

CHAPTER.

25. CIGARETTE AND TOBACCO PRODUCTS TAXES, §§ 63-2501 — 63-2565.
26. COUNTY SALES TAX, §§ 63-2601 — 63-2626.
27. LICENSE TAX ON ELECTRICITY, §§ 63-2701 — 63-2711.
28. TAXATION OF PROFITS OF MINES, §§ 63-2801 — 63-2811.
29. THE IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005, §§ 63-2901 — 63-2910.
30. INCOME TAX, §§ 63-3001 — 63-3089.
31. ANTICIPATION OF REVENUE BY TAXING DISTRICTS, §§ 63-3101 — 63-3108.
32. ANTICIPATION OF REVENUE BY STATE, §§ 63-3201 — 63-3206.
33. ANTICIPATION OF REVENUE BY COUNTIES. [REPEALED.]
34. COLLECTION OF TAXES AND LICENSE FEES, §§ 63-3401 — 63-3409.
35. COOPERATIVE ELECTRICAL ASSOCIATIONS — TAXING GROSS EARNINGS, §§ 63-3501 — 63-3506.
36. SALES TAX, §§ 63-3601 — 63-3641.
37. INTERSTATE COMPACT, §§ 63-3701 — 63-3709.
38. BOARD OF TAX APPEALS, §§ 63-3801 — 63-3820.
39. TAX ON NEWLY CONSTRUCTED AND OCCUPIED RESIDENTIAL AND COMMERCIAL STRUCTURES. [REPEALED.]
40. TAXPAYERS' BILL OF RIGHTS, §§ 63-4001 — 63-4011.
41. SPECIAL DISTRICT DISSOLUTION ACT, §§ 63-4101 — 63-4106.
42. ILLEGAL DRUG STAMP TAX ACT, §§ 63-4201 — 63-4211.
44. THE IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005, §§ 63-4401 — 63-4409.

CHAPTER 1

DEPARTMENT OF REVENUE AND TAXATION

SECTION.

- 63-100. [Repealed.]
- 63-101. Department of revenue and taxation — State tax commission — Board of tax appeals.
- 63-101A, 63-101B. [Repealed.]
- 63-102. Organization — Chairman — Compensation — Quorum — Hearings.
- 63-103. Employees — Compensation — Expenses.
- 63-104. Holding other offices.

SECTION.

- 63-105. Powers and duties — General.
- 63-105A. Powers and duties — Property tax.
- 63-106. Federal aid.
- 63-107. Process and procedure before state tax commission.
- 63-108. Meeting of state tax commission.
- 63-109. Equalization by categories — Identification and reassessment.
- 63-110. Property and special taxes.
- 63-111. Certificate by chairman — Changes in assessment.

SECTION.

- 63-112. Payments for assistance with property tax assessment.
- 63-113. Reporting whole dollar amounts.
- 63-114. Filing and payment extensions as disaster relief.
- 63-115. Filing of electronic returns and documents — Electronic funds transfers.
- 63-116. [Reserved.]

SECTION.

- 63-117. Payment of taxes by credit card and other commercially acceptable means.
- 63-118. Alternative dispute resolution.
- 63-119. Collection of tax by commercial collector.
- 63-120 — 63-122. [Reserved.]
- 63-123. [Repealed.]

63-100. Declaration of legislative intent. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-100, as added by 1965, ch. 312, § 1, p. 849, was repealed by S.L. 1969, ch. 455, § 83.

63-101. Department of revenue and taxation — State tax commission — Board of tax appeals. — (1) There is hereby created the department of revenue and taxation, which shall consist of a state tax commission and a board of tax appeals. The department of revenue and taxation shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of state government.

(2) The state tax commission shall be the constitutional tax commission prescribed in section 12, article VII, of the constitution of the state of Idaho.

(3) The board of tax appeals shall be as provided in chapter 38, title 63, Idaho Code.

(4) The state tax commission may organize itself, or may organize such administrative units under the direction and control of the state tax commission, as deemed necessary for proper and efficient operation in order to exercise the constitutional and statutory authority and functions assigned to the state tax commission by the provisions of this title, or by other laws.

(5) The state tax commission shall consist of four (4) members, not more than two (2) of whom shall belong to the same political party. The members of the state tax commission shall be appointed by the governor, by and with the consent of the senate; and shall be subject to removal by impeachment as provided in chapter 40, title 19, Idaho Code.

(6) Appointments, except appointments to fill vacancies, shall be for a term of six (6) years. Appointments to fill a vacancy shall be made by the governor, and the name of the appointee shall be submitted to the senate for confirmation at the next regular or extraordinary session, and upon confirmation of the appointment, the appointee shall hold office for the unexpired term.

(7) Each member of the state tax commission shall take, subscribe and file with the secretary of state an oath of office in the form, time and manner prescribed in chapter 4, title 59, Idaho Code. Each state tax commissioner shall be bonded to the state of Idaho in the form, time and manner prescribed in chapter 8, title 59, Idaho Code.

(8) The state tax commission shall have an office in Ada county and may establish temporary offices at any place within the state whenever necessary for the discharge of the state tax commission's duties.

(9) The state tax commission shall have an official seal, of which an impression and description shall be filed with the secretary of state. Judicial notice shall be taken of the seal of the state tax commission. Copies of papers, records, proceedings and documents in the possession of the state tax commission may be authenticated by affixation of the seal of the commission and the attestation of the chairman of the commission, and when so sealed and attested shall be received in evidence in all courts with the same effect as the originals. [I.C., § 63-101, as added by 1996, ch. 98, § 2, p. 308; am. 2001, ch. 183, § 28, p. 613.]

STATUTORY NOTES

Cross References. — Duties with reference to equalization of assessment of net profits of mines, § 63-2810.

Impersonation of officer, deputy or em-

ployee of state tax commission, felony, § 18-6309.

Oath of office, §§ 59-401 — 59-408.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Character of board.
Good faith presumed.
Review.

Character of Board.

State board of equalization was not a court, but exercised quasi judicial functions. It was entirely a creature of law and had no power except that given by law. *Orr v. State Bd. of Equalization*, 3 Idaho 190, 28 P. 416 (1891); *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916); *Kootenai County v. State Bd. of Equalization*, 31 Idaho 155, 169 P. 935 (1917).

Good Faith Presumed.

Good faith of members of state board of

equalization and validity of their acts were presumed. *Oregon Short Line R.R. v. Ross*, 52 F.2d 695 (D. Idaho 1931).

Review.

State board of equalization had the right to exercise a fair discretion in the valuation of property, and when it had once acted, and there was no fraud shown in its judgment, its action was not subject to review. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

63-101A. Classes of property. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-101A, as added by 1965,

ch. 312, § 3, p. 849, was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

63-101B. Assessed valuation defined. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised I.C., § 63-101B, as added by 1965, ch. 312, § 4, p. 849; am. 1967, ch. 343, § 2, p. 984; am. 1969, ch. 315, § 1, p. 972, was repealed by S.L. 1979, ch. 18, § 6 effective January 1, 1980.

63-102. Organization — Chairman — Compensation — Quorum — Hearings. — (1) A member of the state tax commission shall be appointed by the governor, to serve at his pleasure, as chairman. Each member of the state tax commission shall devote full time to the performance of duties. Commencing on July 1, 2007, the annual salary for members of the state tax commission shall be eighty-two thousand nine hundred fifty-nine dollars (\$82,959).

(2) A majority of the state tax commission shall constitute a quorum for the transaction of business. The state tax commission may delegate to any member of the commission or to its employees, the power to make investigations and hold hearings at any place it may deem proper, and such other matters as will facilitate the operations of the commission.

(3) The chairman of the state tax commission shall delegate to each commissioner the responsibility for policy management and oversight of one (1) or more of the taxes collected and/or activities supervised or administered by the commission. The state tax commission shall perform the duties imposed upon it by law and shall adopt all rules by majority decision.

In any case in which the state tax commission sits as an appellate body upon an appeal from a tax decision from one (1) of the various administrative units subject to its supervision, the state tax commissioner charged with responsibility for policy management and oversight of the tax in controversy shall not vote upon the appeal but may advise the remaining members of the commission on the technical aspects of the problems before them.

(4) The chairman shall be the chief executive officer and administrative head of the state tax commission and shall be responsible for, or may assign responsibility for, all personnel, budgetary and/or fiscal matters of the state tax commission. [I.C., § 63-102, as added by 1996, ch. 98, § 2, p. 308; am. 1997, ch. 169, § 1, p. 483; am. 1998, ch. 358, § 3, p. 350; am. 2000, ch. 359, § 2, p. 1195; am. 2001, ch. 279, § 1, p. 1008; am. 2004, ch. 281, § 2, p. 774; am. 2006, ch. 368, § 2, p. 1106; am. 2007, ch. 121, § 2, p. 370.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 368, substituted the current second sentence in subsection (1) for "Commencing on July 1, 2004, the annual salary for members of the state tax commission shall be seventy-one thousand seven hundred eight dollars (\$71,708)."

The 2007 amendment, by ch. 121, substituted "eighty-two thousand nine hundred fifty-nine dollars (\$82,959)" for "seventy-nine thousand nine dollars (\$79,009)" in subsection (1).

63-103. Employees — Compensation — Expenses. — (1) The state tax commission may employ an officer who shall serve as secretary of the commission and shall also employ such other persons as may be necessary for the performance of its duties. Certain of its employees may be designated as deputies who shall perform such duties as prescribed by the state tax commission. The state tax commission may delegate to any of its employees the duty of assisting in the collection, audit, inspection and enforcement of any tax or license and may authorize any of its employees to act in its place and stead. The state tax commission may delegate any other function, responsibility or duty imposed upon the commission to one (1) or more commissioners or deputy commissioners; provided however, where the amount in issue relating to the tax liability of any taxpayer is equal to or exceeds fifty thousand dollars (\$50,000), and the commission has delegated the authority to compromise such liability to an individual commissioner, the compromise agreement shall be executed by at least one (1) commissioner in addition to the delegated commissioner. The commission shall adopt guidelines to govern review of compromise agreements. The state tax commission may employ counsel, or may retain counsel.

(2) The compensation of all state tax commission employees shall be paid upon the same basis and in the same manner as the compensation of other state employees is paid.

(3) The traveling expenses of the members of the state tax commission and its employees when traveling in performance of official duty, and other necessary expenses incurred in performance of its duties, shall be paid upon the same basis and in the same manner as the expenses of other state employees are paid. [I.C., § 63-103, as added by 1996, ch. 98, § 2, p. 308; am. 1997, ch. 173, § 1, p. 491.]

63-104. Holding other offices. — The members and employees of the state tax commission shall hold no other office under the laws of this state, the United States, or any other state, except as provided in this section, so long as they shall remain members or employees of the commission. Any member or employee of the tax commission may serve in the national guard or armed forces of the United States. Further, any member or employee of the tax commission may be appointed or elected to other office, when that office is without compensation beyond reimbursement for actual expenses, so long as service in the office does not conflict with the duties of the tax commission. [I.C., § 63-104, as added by 1996, ch. 98, § 2, p. 308.]

63-105. Powers and duties — General. — In addition to all other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the state tax commission.

(2) To make, adopt and publish such rules as it may deem necessary and desirable to carry out the powers and duties imposed upon it by law, provided however, that all rules adopted by the state tax commission prior to the effective date [January 1, 1997] of this 1996 amendatory act shall

remain in full force and effect until such time as they may be rescinded or revised by the commission.

(3) To maintain a tax research section to observe and investigate the effectiveness and adequacy of the revenue laws of this state and to assist the executive and legislative departments in estimation of revenue, analysis of tax measures and determination of the administrative feasibility of proposed tax legislation.

(4) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(5) To ensure that statutory penalties are enforced, and proper complaint is made against persons derelict in duty under any law relating to assessment or equalization of taxes.

(6) To sue and be sued in the name of the state tax commission.

(7) To summon witnesses to appear before it or its agents to testify and/or produce for examination such books, papers, records or other data relating to any matter within its jurisdiction. However, no person shall be required to testify outside the county wherein he resides or the principal place of his business is located. Such summons to testify shall be issued and served in like manner as a subpoena to witnesses issued from the district court and shall be served without fee or mileage charge by the sheriff of the county, and return of service shall be made by the sheriff to the commission. Persons appearing before the commission or its agents in obedience to such a summons, shall, in the discretion of the commission, receive the same compensation as witnesses in the district court, to be paid upon claims presented against the state from any appropriation made for the administration of the provisions of this title, in the same manner as other claims against the state are presented and paid.

(8) To administer oaths and take affirmations of witnesses appearing before it. The power to administer oaths and take affirmations is vested in each member of the state tax commission, and its duly constituted agents. In case any witness shall fail or refuse to appear and testify before the state tax commission or its agents upon being summoned to appear as herein provided, the clerk of the district court of the county shall, upon demand of the state tax commission, any member thereof, or agent, issue a subpoena reciting the demand therefor and summoning the witness to appear and testify at a time and place fixed; and violation of such subpoena or disobedience thereto shall be deemed and punished as a violation of any other subpoena issued from the district court.

(9) To report to the governor from time to time, and to furnish to the governor such assistance and information as may be required.

(10) To recommend to the governor in a report at least sixty (60) days before and to the legislature ten (10) days prior to the meeting of any regular session of the legislature such amendments, changes and modifications of the various tax laws necessary to remedy injustice and irregularities in taxation and to facilitate assessment and collection of taxes in the most economical and efficient manner. [I.C., § 63-105, as added by 1996, ch. 98, § 2, p. 308.]

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****ANALYSIS**

Assessments.

Overriding of counties' valuation.

Subpoenas.

Assessments.

The state tax commission is constitutionally and statutorily empowered and authorized to equalize the assessments of property among the various counties of the state; accordingly, where the tax commission procedurally followed the proper state statutes prior to entering its directive to certain county auditors requiring that the county auditors enter upon the real property assessment rolls of their respective counties certain adjustments to accomplish equalization, the tax commission acted in accordance with the mandated procedures and those procedures did not violate the due process provisions of the United States Constitution or the state Constitution. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

Overriding of Counties' Valuation.

The state tax commission has the constitutional authority to override the counties' valuation, and if the tax commission's action is not fraudulent or so arbitrary as to amount to constructive fraud, the commission's action is not subject to judicial review. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

Subpoenas.

Although state tax commission has the duty to investigate the ratios of assessed values to market values of realty, this does not justify issuing subpoenas requiring a bank escrow agent to produce escrow documents. *State Tax Comm'n v. First Sec. Bank*, 96 Idaho 261, 526 P.2d 1097 (1974).

63-105A. Powers and duties — Property tax. — The state tax commission shall be the state board of equalization. In addition to other powers and duties vested in it, the state tax commission shall have the power and duty:

(1) To supervise and coordinate the work of the several county boards of equalization.

(2) To secure, tabulate and keep records of valuations of all classes of property throughout the state, and for that purpose, to have access to all records and files of state offices and departments and county and municipal offices, and to require all public officers and employees whose duties make it possible to ascertain valuations, including valuations of public utilities for rate-making purposes, to file reports with the state tax commission, giving such information as to valuation and the source thereof. The nature and kind of the tabulations, records of valuations and requirements from public officers as stated herein, shall be in such form and cover such valuations as the state tax commission may prescribe.

(3) To coordinate and direct a system of property taxation throughout the state.

(4) To require all assessments of property in this state to be made according to law; and for that purpose to correct, when it finds the same to be erroneous, any assessments made in any county, and require correction of the county assessment records accordingly.

(5) To prescribe forms and to specify and require information with relation to any duty or power of the state tax commission except as provided in section 63-219, Idaho Code.

(6) To instruct, guide, direct and assist the county assessors and county boards of equalization as to the methods best calculated to secure uniformity in the assessment and equalization of property taxes, to the end that all property shall be assessed and taxed as required by law.

(7) To reconvene, whenever the state tax commission may deem necessary, any county board of equalization, notwithstanding the limitations of chapter 5, title 63, Idaho Code, for equalization purposes and for correction of errors. The county board of equalization, when so reconvened shall have no power to transact any business except that for which it is specially reconvened, or such as may be brought before it by the state tax commission.

(8) To require prosecuting attorneys to institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals and punishments for violations of law in connection with the assessment and taxation of property. It shall be the duty of such officers to comply promptly with the requirements of the state tax commission in that relation.

(9) To require individuals, partnerships, companies, associations and corporations to furnish such information as the state tax commission may require concerning their capital, funded or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes and all other facts which may be needed to enable the state tax commission to ascertain the value and the relative tax burden borne by all kinds of property in the state, and to require from all state and local officers such information as may be necessary to the proper discharge of the duties of the state tax commission.

(10) To visit, as a state tax commission or by individual members or agents thereof, whenever the state tax commission shall deem it necessary, each county of the state, for the investigation and direction of the work and methods of assessment and equalization, and to ascertain whether or not the provisions of law requiring the assessment of all property, not exempt from taxation, and just equalization of the same have been or are being properly administered and enforced.

(11) To carefully examine all cases where evasion or violation of the laws of assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered.

(12) To correct its own errors in property assessment at any time before the first Monday in November, and report such correction to the county auditor and county tax collector, who shall thereupon enter the correction upon the operating property roll.

(13) To apportion annually to the state and the respective counties any moneys received by the state from the United States or any agency thereof, as payments in lieu of property taxes; provided, that said moneys shall be apportioned in the same amounts, and to the same governmental divisions as the property taxes, in lieu of which payments are made, would be apportioned, if they were levied. The state treasurer and the state controller shall be bound, in making distribution of moneys so received, by the apportionment ordered by the state tax commission.

(14) To make administrative construction of property tax law whenever necessary or requested by any officer acting under such laws and until

judicially overruled, such administrative construction shall be binding upon the inquiring officer and all others acting under such laws.

(15) To require the attendance of any assessor in the state at such time and place as may be designated by the commission, and the actual and necessary expenses of any assessor in attending any such meeting shall be a legal claim against his county.

(16) To analyze the work of county assessors at any time and to have and possess all rights and powers of such assessors for the examination of persons and property, and for the discovery of property subject to taxation; and if it shall ascertain that any taxable property is omitted from the property rolls or is not assessed or valued according to law, it shall bring the same to the attention of the assessor of the proper county in writing, and if such assessor shall neglect or refuse to comply with the request of the state tax commission to place such property on the property rolls, or correct such incorrect assessment or valuation, the tax commission shall have the power to prepare a supplemental roll, which supplemental roll shall include all property required by the tax commission to be placed on the property roll and all corrections to be made. Such supplement shall be filed with the assessor's property roll, and shall thereafter constitute an integral part thereof to the exclusion of all portions of the original property rolls inconsistent therewith, and shall be submitted therewith to the county board of equalization.

(17) To provide a program of education and an annual appraisal school for its employees, for county commissioners and for the assessors of the various counties of this state. Additionally, the state tax commission shall provide for the establishment of a property tax appraiser certification program. Such program shall include, as a minimum, a written examination prepared, administered and graded under the supervision and control of an examination committee; such committee is to be composed as the state tax commission may provide by rule. The state tax commission's rules shall include, but need not be limited to, the following:

(a) The composition of the examination committee, provided however, that the committee shall include a representative of the counties, an agent of the state tax commission and a representative of a professional appraisal association within this state. The representative of the counties together with the representatives of such professional appraisal association shall constitute a majority of the committee.

(b) The frequency with which the examination shall be given.

(c) A reasonable review procedure by which examinees having complaints may seek review of the examination committee.

(d) The establishment of a reasonable period of time within which a county appraiser must meet the certification requirements as a condition to continued employment by the county as a certified property tax appraiser.

(18) To report at least quarterly to the revenue and taxation committee of the house of representatives and to the joint senate finance-house appropriations committee on its program to assist the counties with the property tax assessments.

(19) To transmit to the governor and to the legislature, an annual report, with the state tax commission's recommendations as to such legislation as will correct or eliminate defects in the operations of the property tax laws and will equalize taxation within the state. Said annual report shall include a comprehensive study of the property tax laws and detailed statistical information concerning the operation of the property tax laws of this state. Said report shall be submitted prior to the meeting of any regular session of the legislature.

(20) To maintain a forest land and forest product tax section to perform the functions and duties of the state tax commission under the provisions of chapter 17, title 63, Idaho Code. [I.C., § 63-105A, as added by 1996, ch. 98, § 2, p. 308; am. 1998, ch. 200, § 1, p. 713.]

63-106. Federal aid. — The state tax commission is authorized to accept, receipt, disburse and expend federal moneys, made available to accomplish in whole or in part any of the purposes of the laws enforced by the state tax commission. All moneys accepted under the provisions of this section shall be accepted and expended by the state tax commission upon such terms and conditions as prescribed by the United States. All moneys received by the state tax commission pursuant to this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority in which said moneys were received, shall be kept in separate funds designated according to the purpose for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are hereby appropriated for the purpose for which the same were made available, and the state tax commission is empowered to disburse or expend said moneys in accordance with the terms and conditions upon which they were made available. [I.C., § 63-106, as added by 1996, ch. 98, § 2, p. 308.]

63-107. Process and procedure before state tax commission. — Process and procedure before the state tax commission shall be as summary and simple as reasonably may be, and, as far as possible, in accordance with the rules of equity. Process and procedures before the state tax commission as the state board of equalization under title 63, Idaho Code, and before the state tax commission for redetermination of taxes under section 63-3045 or 63-3631, Idaho Code, are not contested cases within the meaning of chapter 52, title 67, Idaho Code. [I.C., § 63-107, as added by 1996, ch. 98, § 2, p. 308.]

63-108. Meeting of state tax commission. — (1) The state tax commission shall meet on the second Monday in August in each year, and, if all the abstracts of assessments in the several counties in the state have then been received, such abstracts shall be laid before the commission, which shall proceed to equalize the assessments throughout the state.

(2) In case all the abstracts of assessments in the several counties of the state have not been received by the state tax commission on or before the second Monday of August, then the commission shall adjourn from day to day until all of the abstracts have been received. The state tax commission

may issue subpoenas for any county auditor who has failed to transmit his abstract of assessments, or whose abstract of assessments has not been received, requiring such county auditor to forthwith appear before the commission and produce said abstract. The sheriff of the county where the officer to be served resides is hereby designated as the officer by whom such subpoena shall be served and all actual and necessary expenses incurred by the sheriff in making such service shall be a legal claim against his county, and the officer served shall be liable on his official bond for said expenses in addition to any other liability imposed upon him for failure to transmit his abstract of assessments within the time prescribed in this chapter. [I.C., § 63-108, as added by 1996, ch. 98, § 2, p. 308.]

63-109. Equalization by categories — Identification and reassessment. — The state tax commission shall publish rules establishing and defining categories in which various properties will be placed for assessment purposes. The state tax commission shall equalize the assessments of property throughout the state, by categories, as shown by the abstracts transmitted by the several county auditors, county by county. In such equalization, the state tax commission shall have power to increase or decrease the total value of any category of property in any county as shown by the abstract from that county when, in the opinion of the commission, the value of that category appearing in such abstract is not just and equal as compared with the value of other categories of property in that county, or the value of similar categories of property in other counties, because of its being greater than or less than the market value. Upon receiving information from any source that any property in any county of the state has been omitted from the property roll, or has been improperly assessed, the state tax commission shall have the power to compel the assessor of such county to assess such property and place it upon the property roll forthwith, and to compel the reassessment of all property improperly assessed. The state tax commission is also empowered to identify or order and compel a proper identification of property by categories for assessment purposes in any county, and to create new categories for any taxable property, and to order and compel reassessment by the county assessor of any category or categories of property within the county. [I.C., § 63-109, as added by 1996, ch. 98, § 2, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Changes in valuations.

—Judicial review.

Equalization of assessments.

Changes in Valuations.

—Judicial Review.

The state tax commission has the constitutional authority to override the counties' valuation; and if the tax commission's action is not fraudulent or so arbitrary as to amount to constructive fraud, the commission's action is not subject to judicial review. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

Equalization of Assessments.

The state tax commission is constitutionally and statutorily empowered and autho-

rized to equalize the assessments of property among the various counties of the state; accordingly, where the tax commission procedurally followed the proper state statutes prior to entering its directive to certain county auditors requiring that the county auditors enter upon the real property assessment rolls of their respective counties certain adjustments to accomplish equalization, the tax commission acted in accordance with the mandated procedures and those procedures did not violate the due process provisions of the United States Constitution or the state Constitution. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

63-110. Property and special taxes. — The state tax commission must complete the equalization of assessments throughout the state on the fourth Monday of August in the year in which such assessments are made, and, if there is to be a state property tax, shall on that day determine the amount of state property tax which each county must collect and remit to the state, by apportioning the total state property tax among the several counties in the state in the exact proportion that the total equalized valuation of each county, as shown by the property roll for the current year, and the subsequent and missed property rolls for the preceding year, bears to the total equalized valuation of the state from such rolls of all the counties in the state. The state tax commission shall also determine the amount of special state taxes, if any, which each county must collect and remit to the state, and the total amount of such state property and special state taxes found to be due from each county shall be certified to the county auditor of such county by the chairman of the state tax commission, and the county auditor shall, upon receipt of such certificate, file the same in his office; provided, that the total amount of all special state taxes levied for the current year upon property entered upon the subsequent and missed property rolls of each county for such year shall be certified to the county auditor of such county by the chairman of the state tax commission upon receipt of the county auditor's abstract of the subsequent and missed property rolls. [I.C., § 63-110, as added by 1996, ch. 98, § 2, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Taxes Wrongfully Collected.

Taxes wrongfully collected by a county and remitted to the state could not be refunded to the county to reimburse the county for a court ordered refund of such taxes made by the

county without a legislative appropriation nor could the amount of such taxes be deducted by the county from subsequent remittances of taxes. *State ex rel. Williams v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

63-111. Certificate by chairman — Changes in assessment. — (1) On or before the first Monday of September in each year, the chairman of the state tax commission must transmit by certified mail or by other commercial delivery service providing proof of delivery, whichever is the most cost-efficient, to the county auditor of each county in the state, a

certified statement showing all the changes in the assessment of any class or all classes of property, or in the aggregate value of all property in said county, and the total increase or decrease as a result of all changes made by the state tax commission in the assessment of property in said county, and the county auditor shall, upon receipt of such certified statement, file the same in his office.

(2) In transmitting the certified statement, as prescribed in subsection (1) of this section, the chairman shall also transmit therewith the certificate showing the total amount of state property and special state taxes, if any, found to be due from the county, and shall also transmit therewith a certified statement showing the assessment of any railroad, telegraph, telephone or electric current transmission or distribution line and all other operating property under the jurisdiction of the state tax commission situated wholly or partly within the county, specifying the number of miles, the equalized value per mile, and the total equalized value of each line in the county, and in any taxing district into or through which such line extends, and the name of such line, if any, and the name and post office address of the taxpayer or owner of such line, and the county auditor shall, upon receipt of such certified statement, file the same in his office. [I.C., § 63-111, as added by 1996, ch. 98, § 2, p. 308.]

63-112. Payments for assistance with property tax assessment. —

The state tax commission is hereby authorized to charge counties for assistance provided for property tax assessment if requested in writing by the county assessor. Any payments received by the state tax commission for such assistance shall be deposited in the property tax assistance account. [I.C., § 63-112, as added by 1996, ch. 98, § 2, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

63-113. Reporting whole dollar amounts. — The state tax commission may require rounding to the nearest whole dollar any amount shown or required to be shown on any return, form, statement or other document submitted to the state tax commission. Any record or other document prepared or maintained by the state tax commission may express any dollar amount rounded to the nearest whole dollar. [I.C., § 63-113, as added by 1997, ch. 20, § 1, p. 29.]

STATUTORY NOTES

Compiler's Notes. — S.L. 1997, ch. 20, § 1, effective July 1, 1997, ch. 64, § 1, effective

March 13, 1997 and ch. 117, § 10, effective January 1, 1997, all purported to enact a

new section of chapter 1, Title 6, Idaho Code, designated as § 63-113. Section 1 of ch. 20 has been compiled as § 63-113, section 1 of ch. 64 was compiled as [63-114] 63-113, and

section 10 of ch. 117 was compiled as [63-115] 63-113. The redesignations were made permanent by later amendments.

63-114. Filing and payment extensions as disaster relief. —

(1) The state tax commission may grant an extension of time for any filing, or any payment, which is required under any tax law administered or enforced by the state tax commission, to those persons whose ability to timely comply with their filing or payment requirement was adversely affected by a disaster declared by the President of the United States or by the governor of a state or territory of the United States. The state tax commission may grant any person entitled to an extension under section 7508A of the Internal Revenue Code, or regulations promulgated thereunder, an automatic extension for similar returns and payments due to this state.

(2) The state tax commission shall provide a procedure for affected taxpayers to justify the extension and provide such other information as the commission may require to support the taxpayer's application. A notice of denial of an extension application shall be given in the manner provided for notices of deficiencies in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(3) No extension granted under this section shall be for a period in excess of one (1) year.

(4) In all cases where the state tax commission has granted an extension under this section, payment of the tax shall not be subject to any late filing penalty or interest if payment of the tax is made on or before the extended due date. Failure to file on the extended due date will thereafter cause the imposition of penalty and interest. Section 63-3033, Idaho Code, shall not apply to taxpayers who receive extensions under this section.

(5) Any rule, activity, procedure or form adopted by the commission to facilitate the provisions of this section, are exempt from the provisions of chapter 52, title 67, Idaho Code. [I.C., § 63-113, as added by 1997, ch. 64, § 1, p. 136; am. and redesign. 2002, ch. 21, § 1, p. 25.]

STATUTORY NOTES

Federal References. — Section 7508A of the Internal Revenue Code, referred to in subsection (1), is codified as 26 U.S.C.S. § 7508A.

Compiler's Notes. — This section was formerly compiled as § 63-113.

Effective Dates. — Section 3 of S.L. 1997, ch. 64 declared an emergency. Approved March 13, 1997.

Section 2 of S.L. 2002, ch. 21 declared an emergency retroactively to September 10, 2001. Approved February 12, 2002.

63-115. Filing of electronic returns and documents — Electronic funds transfers. — (1) Any return or other document filed with or submitted to the state tax commission may be transmitted electronically to the commission when permitted by rules or procedures established by the commission. Payments of any amounts to the commission by electronic funds transfer shall be in accordance with sections 67-2026 and 67-2026A, Idaho Code, or section 63-117, Idaho Code.

(2) As used in this section, “transmitted electronically” means the use of a telecommunication or computer network to transfer information in an optical, electronic, magnetic or other machine sensible form. The term includes the use of facsimile machines and third party value added networks.

(3) Any return or other document transmitted electronically to the commission and accepted by the commission shall be deemed received on the earlier of:

(a) The date it arrives at the commission or, in the case of returns filed through the Internal Revenue Service, the date the return is received by the Internal Revenue Service; or

(b) The date that a third party, in accordance with procedures approved by the commission, transmits the return to the commission or makes it otherwise available to the commission.

(4) Any payment made electronically shall be deemed paid on the date the funds are available to the state treasurer.

(5) To constitute a properly filed valid tax return or report, a document transmitted electronically or submitted in a physical machine sensible form such as tape or disk must:

(a) Be filed in a format prescribed by the tax commission and be sufficiently free of errors to identify the filer and the tax type and to calculate the amounts due;

(b) Contain the taxpayer’s name, address (if required by the tax commission) and identifying number;

(c) Be signed by the taxpayer or other individual effecting the signature or verification; and

(d) Include sufficient information to permit the mathematical verification of any tax liability.

(6) The tax commission may, by rule, prescribe exclusive methods for electronically signing or verifying a return or other document transmitted electronically to the commission that shall have the same validity and consequences as manual signing by the taxpayer or other individual effecting the signature or verification. [I.C., § 63-113, as added by 1997, ch. 117, § 10, p. 298; am. and redesign. 2000, ch. 15, § 1, p. 31; am. 2001, ch. 54, § 1, p. 96; am. 2003, ch. 30, § 1, p. 113.]

STATUTORY NOTES

Compiler’s Notes. — S.L. 1997, ch. 20, § 1, effective July 1, 1997, ch. 64, § 1, effective March 13, 1997 and ch. 117, § 10, effective January 1, 1997, all purported to enact a new section of chapter 1, Title 6, Idaho Code, designated as § 63-113. Section 1 of ch. 20 was compiled as § 63-113, section 1 of ch. 64 was compiled as [63-114] 63-113, and section 10 of ch. 117 was compiled as [63-115] 63-113. The redesignations were made permanent by later amendments.

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full

force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 2001, ch. 54 provided: “This act shall be in full force and effect, and shall apply to tax returns filed for periods beginning on and after January 1, 2002.”

Section 2 of S.L. 2003, ch. 30 provided: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 2003, in the case of returns required by Section 63-3030, Idaho Code, for taxable periods beginning on and after Janu-

ary 1, 2003, and in the case of all other returns the effective date shall be on and after July 1, 2003.”

63-116. [Reserved.]

63-117. Payment of taxes by credit card and other commercially acceptable means. — (1) The state tax commission, in cooperation with the state treasurer, may accept payment by credit card, debit card or other commercially acceptable means from any person making any payment to the state tax commission of taxes or other amounts due under any law administered by the commission. If the payment is made by credit card, debit card, charge card, or similar method, the liability is not finally discharged and the person has not paid the tax until the department receives payment or credit from the institution responsible for making the payment or credit. Upon receipt, the amount shall be deemed paid on the date the charge was made.

(2) The commission may pay, through discount or otherwise, any fee to a financial institution or credit card company for a payment made pursuant to this section from the proceeds of the taxes or other amounts paid prior to any other distribution of the proceeds required by law. The necessary portion of the proceeds collected under this section is hereby appropriated for the purpose of paying the fee. [I.C., § 63-117, as added by 1999, ch. 113, § 1, p. 340.]

63-118. Alternative dispute resolution. — (1) The state tax commission may use alternative dispute resolution procedures to arbitrate or mediate any issue within its tax jurisdiction.

(2) The state tax commission may enter into contracts, not subject to the provisions of chapter 52, title 67, Idaho Code, with individuals and organizations including, but not limited to, the multistate tax commission, to conduct alternative dispute resolution. Costs of alternative dispute resolution procedures may be paid from resultant proceeds without regard to budgetary or appropriation restrictions.

(3) The state tax commission shall appoint one (1) of its members as alternative dispute resolution coordinator and from its staff one (1) or more assistant coordinators. [I.C., § 63-118, as added by 1998, ch. 105, § 1, p. 362.]

STATUTORY NOTES

Cross References. — Multistate tax commission, § 63-3701.

63-119. Collection of tax by commercial collector. — (1) If a person owing tax ignores all demands for payment of a tax assessment, the state tax commission is authorized to employ the services of any qualified collection agency or attorney and to pay fees for such services from moneys recovered.

(2) As used in this section, the term “qualified collection agency” means a person issued a permit under chapter 22, title 26, Idaho Code, or under a similar licensing or permitting statute of another state or jurisdiction in which the person conducts business. [I.C., § 63-119, as added by 2005, ch. 30, § 1, p. 141.]

63-120 — 63-122. [Reserved.]

63-123. Public welfare recipients excluded. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 63-123, as added by 1974, ch. 228, § 9, p. 1576, was repealed by S.L. 1981, ch. 306, § 1, effective January 1, 1981.

CHAPTER 2

DEFINITIONS — GENERAL PROVISIONS

SECTION.

- 63-201. Definitions.
- 63-202. Official records.
- 63-203. All property subject to property taxation.
- 63-204. Classes of property.
- 63-205. Assessment — Market value for assessment purposes.
- 63-206. Lien of property taxes.
- 63-207. Assessment of property.
- 63-208. Rules pertaining to market value — Duty of assessors.
- 63-209. Assessor’s plat record.
- 63-210. Tax numbers for metes and bounds descriptions.
- 63-211. Abstract of state lands.
- 63-212. Estates — Claimants — Agents — Undivided interest.

SECTION.

- 63-213. Double assessing prohibited.
- 63-214. Description of property.
- 63-215. Legal description and map of boundaries to be recorded and filed.
- 63-216. No state property tax when sales tax is in force.
- 63-217. Filing of material by mail or private delivery services.
- 63-218. Reproduction of records — Destruction of originals authorized — Admissibility in evidence — Prevalence over previous law.
- 63-219. Uniform property rolls and related documents.
- 63-220. Tax extensions as disaster relief.

63-201. Definitions. — As used for property tax purposes in title 63, chapters 1 through 23, Idaho Code, the terms defined in this section shall have the following meanings, unless the context clearly indicates another meaning:

(1) “Appraisal” means an estimate of property value for property tax purposes.

(a) For the purpose of estimated property value to place the value on any assessment roll, the value estimation must be made by the assessor or a certified property tax appraiser.

(b) For the purpose of estimating property value to present for an appeal filed pursuant to sections 63-501A, 63-407 and 63-409, Idaho Code, the value estimation may be made by the assessor, a certified property tax appraiser, a licensed appraiser, or a certified appraiser or any party as specified by law.

(2) “Bargeline” means those water transportation tugs, boats, barges, lighters and other equipment and property used in conjunction with waterways for bulk transportation of freight or ship assist.

(3) "Cogenerators" means facilities which produce electric energy, and steam or forms of useful energy which are used for industrial, commercial, heating or cooling purposes.

(4) "Collection costs" are amounts authorized by law to be added after the date of delinquency and collected in the same manner as property tax.

(5) "Delinquency" means any property tax, special assessment, fee, collection cost, or charge collected in the same manner as property tax, that has not been paid in the manner and within the time limits provided by law.

(6) "Improvements" means all buildings, structures, fixtures and fences erected upon or affixed to the land, and all fruit, nut-bearing and ornamental trees or vines not of natural growth, growing upon the land, except nursery stock.

(7) "Late charge" means a charge of two percent (2%) of the delinquency.

(8) "Lawful money of the United States" means currency and coin of the United States at par value and checks and drafts which are payable in dollars of the United States at par value, payable upon demand or presentment.

(9) "Manufactured home" means a structure defined as a manufactured home in section 39-4105, Idaho Code.

(10) "Market value" means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

(11) "Operating property" means all rights-of-way accompanied by title; roadbeds; tracks; pipelines; bargelines; equipment and docks; terminals; rolling stock; equipment; power stations; power sites; lands; reservoirs, generating plants, transmission lines, distribution lines and substations; and all immovable or movable property operated in connection with any public utility, railroad or private railcar fleet, wholly or partly within this state, and necessary to the maintenance and operation of such road or line, or in conducting its business, and shall include all title and interest in such property, as owner, lessee or otherwise. The term includes electrical generation plants under construction, whether or not owned by or operated in connection with any public utility. The term does not include personal property exempt from taxation pursuant to section 63-602L, Idaho Code.

(12) "Party in interest" means a person who holds a properly recorded mortgage, deed of trust or security interest.

(13) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entities as recognized by the state of Idaho.

(14) "Personal property" includes all goods, chattels, stocks and bonds, equities in state lands, easements, reservations, leasehold real properties and all other property which the law defines, or the courts may interpret, declare and hold to be personal property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation. For the purposes of payment and collection of property taxes pursuant to chapter 9, title 63, Idaho Code, collection of delinquency pursuant to chapter 10, title 63, Idaho

Code, and seizure and sale of personal property for taxes pursuant to chapter 11, title 63, Idaho Code, personal property includes manufactured homes not declared as real property pursuant to section 63-304, Idaho Code.

(15) “Private railcar fleet” means railroad cars or locomotives owned by, leased to, occupied by or franchised to any person other than a railroad company operating a line of railroad in Idaho or any company classified as a railroad by the interstate commerce commission and entitled to possess such railroad cars and locomotives except those possessed solely for the purpose of repair, rehabilitation or remanufacturing of such locomotives or railroad cars.

(16) “Public utility” means electrical companies, pipeline companies, natural gas distribution companies, or power producers included within federal law, bargelines, and water companies which are under the jurisdiction of the Idaho public utilities commission. The term also includes telephone corporations, as that term is defined in section 62-603, Idaho Code, except as hereinafter provided, whether or not such telephone corporation has been issued a certificate of convenience and necessity by the Idaho public utilities commission.

This term does not include cogenerators, mobile telephone service or companies, nor does it include pager service or companies, except when such services are an integral part of services provided by a certificated utility company nor does the term “public utility” include companies or persons engaged in the business of providing solely on a resale basis, any telephone or telecommunication service which is purchased from a telephone corporation or company.

(17) “Railroad” means every kind of railway, whether its line of rails or tracks be at, above or below the surface of the earth, and without regard to the kind of power used in moving its rolling stock, and shall be considered to include every kind of street railway, suburban railway or interurban railway excepting facilities established solely for maintenance and rebuilding of railroad cars or locomotives.

(18) “Real property” means land, and all standing timber thereon, including standing timber owned separately from the ownership of the land upon which the same may stand, except as modified in chapter 17, title 63, Idaho Code, and all buildings, structures and improvements, or other fixtures of whatsoever kind on land, including water ditches constructed for mining, manufacturing or irrigation purposes, water and gas mains, wagon and turnpike toll roads, and toll bridges, and all rights and privileges thereto belonging, or any way appertaining, all quarries and fossils in and under the land, and all other property which the law defines, or the courts may interpret, declare and hold to be real property under the letter, spirit, intent and meaning of the law, for the purposes of property taxation. Manufactured homes constitute real property when located on taxable land, and after a statement of intent to declare as real property has been recorded, provided said statement has not been revoked. Timber, forest, forest land, and forest products shall be defined as provided in chapter 17, title 63, Idaho Code.

(19) “Record owner” means the person or persons in whose name or names the property stands upon the records of the county recorder’s office.

Where the record owners are husband and wife at the time of notice of pending issue of tax deed, notice to one (1) shall be deemed and imputed as notice to the other spouse.

(20) "Special assessment" means a charge imposed upon property for a specific purpose, collected and enforced in the same manner as property taxes.

(21) "System value" means the market value for assessment purposes of the operating property when considered as a unit.

(22) "Tax code area" means a geographical area made up of one (1) or more taxing districts with one (1) total levy within the geographic area, except as otherwise provided by law.

(23) "Taxing district" means any entity or unit with the statutory authority to levy a property tax.

(24) "Taxable value" means market value for assessment purposes, less applicable exemptions or other statutory provisions.

(25) "Transient personal property" is personal property, specifically such construction, logging or mining machinery and equipment which is kept, moved, transported, shipped, hauled into or remaining for periods of not less than thirty (30) days, in more than one (1) county in the state during the same year.

(26) "Warrant of distraint" means a warrant ordering the seizure of personal property to enforce payment of property tax, special assessment, expense, fee, collection cost or charge collected in the same manner as personal property tax. [I.C., § 63-201, as added by 1996, ch. 98, § 3, p. 318; am. 1997, ch. 117, § 11, p. 310; am. 1997, ch. 286, § 1, p. 871; am. 1998, ch. 400, § 1, p. 1249; am. 2006, ch. 302, § 2, p. 931.]

STATUTORY NOTES

Amendments. — This section was amended by two 1997 acts — ch. 117, § 11, effective January 1, 1997 and ch. 286, § 1, effective March 24, 1997 — which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 117, § 11, in present subsection (14) in the first sentence deleted "manufactured homes not declared as real property pursuant to section 63-304, Idaho Code," following "easements, reservations" and added the second sentence.

The 1997 amendment, by ch. 286, § 1, added a new subsection (3) and renumbered former subsections (3) — (25) as present subsections (4) — (26) and in present subsection (16) in the first paragraph deleted

"cogenerators" following "gas distribution companies" and deleted "other" preceding "power producers included" and in the second paragraph added "cogenerators," following "This term does not include".

The 2006 amendment, by ch. 302, added the second sentence in subsection (11).

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1997, ch. 286 declared an emergency. Approved March 24, 1997.

Section 4 of S.L. 2006, ch. 302 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

JUDICIAL DECISIONS

ANALYSIS

Low-income housing credits.
Operating property.

Low-Income Housing Credits.

Tax credits allocated under the federal Low-Income Housing Tax Credit program (LIHTC), 26 USCS § 42, were not a contract right exempt from consideration in the valuation of real property. The tax credits were better characterized as rights and privileges belonging to the land under the definition of real property, as they did not exist separate from an ownership right in the low-income housing. Federal low-income housing tax credits were part of the stream of benefits

that flowed from the property and could be considered equivalent to income. *Brandon Bay, Ltd. P'ship v. Payette County*, 142 Idaho 681, 132 P.3d 438 (2006).

Operating Property.

Where certain regulatory assets did not generate income, the Idaho tax commission did not err by failing to add them to the cost approach in valuing the property. *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 109 P.3d 170 (2005).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 662.

C.J.S. — 84 C.J.S., Taxation, § 73.

63-202. Official records. — Official records of the various county offices may be replicated in any storage media which allows archiving and retrieval to meet the requirements provided by law. [I.C., § 63-202, as added by 1996, ch. 98, § 3, p. 308.]

63-203. All property subject to property taxation. — All property within the jurisdiction of this state, not expressly exempted, is subject to appraisal, assessment and property taxation. [I.C., § 63-203, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Adverse possession, payment of taxes, § 5-210.

Aircraft, fees collected in lieu of taxes, § 21-114.

Airports, county or municipal tax levy authorized, § 21-404.

Beer tax, § 23-1008.

Bees, fees on, § 22-2510.

Bond tax levies in new counties and segregated areas, § 31-1904.

Boxing, wrestling and sparring matches, gross receipts tax, §§ 54-411, 54-413.

Building demolition expenses ordered by fire marshal, collection with taxes, § 41-263.

Burn seeding areas, assessment of costs against land seeded, §§ 38-501 — 38-511.

Cemetery maintenance district tax levies, §§ 27-116, 27-120, 27-121.

Cities, levy authorized, Const., Art. 7, § 8.

Condominiums, assessment or levy of taxes against, § 55-1514.

Corporate credit unions, taxation, § 26-2186.

County dog license tax, § 25-2801.

County fair districts in two or more counties, tax levy for, § 22-307.

County fair purposes, tax levy for, § 22-206.

County fish hatchery, special levy for, § 36-1702.

County-wide highway districts, power to levy ad valorem taxes, § 40-801 et seq.

Drainage district assessments, §§ 42-2934 — 42-2937.

Duplicate taxation prohibited, Const., Art. 7, § 5.

Estate and transfer tax, § 14-401 et seq.

Forest lands and products, § 63-1701 et seq.

Health care plans, self funded, taxation, § 41-4012.

Health maintenance organizations, taxation, § 41-3922.

Highway districts, highway taxes, power to levy taxes, § 40-801 et seq.

Hospital and professional service corporations, taxation of subscribers' contracts, § 41-3427.

Insurance companies, fees and taxes, §§ 41-401 — 41-406.

Irrigation district assessments, §§ 43-701 — 43-732.

Local and special laws prohibited, Const., Art. 3, § 19.

Motor vehicle registration, §§ 49-401 — 49-456.

Municipal corporations:

Collection of taxes, § 50-1007.

Disincorporation, tax levy for payment of debts, § 50-2210.

Local improvement district assessments, § 50-1701 et. seq.
 Special assessments, collection, § 50-1008.
 Port district, tax levy, § 70-1702.
 Recreation districts, tax levy, §§ 31-4318, 31-4326A.
 Revenue laws, violation, § 18-6308.

Rodents, funds for extermination of, levy of tax against land, § 25-2602.
 School district taxes, § 33-801 et seq.
 Sheep disease control, tax levy, § 25-131.
 Special tax districts, § 40-808.
 Stumpage district assessments, § 38-1013 et seq.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Definition of "property."
 Delegation of taxing power to local districts.
 Exemption.
 Holders of tax certificate, liability of county.
 Income tax constitutional.
 Leaseholds.
 Legislative power over taxation.
 Mortgaged lands, merger of title.
 Taxables in general.
 Unpatented land.

Definition of "Property."

The term "property" within constitutional provision, requiring all "property" to be taxed uniformly by value, must be given its commonly accepted significance. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Delegation of Taxing Power to Local Districts.

Power of taxation is a sovereign power delegatory to local taxing districts to raise funds in behalf of sovereignty for the public good. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

Exemption.

Exemption from taxation is never presumed. *Kootenai County v. Seven-Seven Co.*, 32 Idaho 301, 182 P. 529 (1919).

Statutes granting exemptions, which exist as a matter of legislative grace, are strictly construed against the taxpayer and in favor of the state. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

None of the property of the corporation involved, neither the lots sold for burial purposes nor the unplatted acreage, was exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of § 63-105 so as to entitle it to exemption from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

Where a Sisterhood after incorporating, purchased land and permitted taxpayers to build dwellings thereon for their residence during their lifetime, thereafter becoming

available to other members of the Sisterhood for occupancy and the tax assessor levied taxes on such properties, the taxpayers could not escape liability for such taxes on the ground that the dwellings were occupied and built under a life tenure only, as an examination of the controlling statutes failed to disclose exemption from taxation of freehold estates such as those held by taxpayers. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Holders of Tax Certificate, Liability of County.

Where the county commissioner acting as a special tribunal ordered that all taxes and charges on certain described lands should be canceled, annulled, avoided and set aside, the holder of delinquent tax certificates based on such levy could recover from the county the amount paid for such certificates, with interest thereon. *Wilson v. Twin Falls County*, 47 Idaho 527, 277 P. 1114 (1929).

Income Tax Constitutional.

The law imposes upon those who derive gain from within the state a fair and equitable tax, levied in graduated proportion upon their ability to pay, which is, in all respects, valid and constitutional. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Leaseholds.

Where land in Idaho owned by the United States government in trust for certain Indian allottees was leased by the United States to plaintiff for 25 years with an option to renew for an additional 25 years, and plaintiff built a potato storage warehouse on the land with a

useful life of 50 to 75 years with the ownership of the warehouse, by the terms of the lease, to be in the United States, but the use thereof to belong to plaintiff for the duration of the lease; plaintiff was not obliged to pay Idaho ad valorem taxes on the warehouse since it was owned by the United States and therefore exempt from such taxation, and no Idaho statute provided for taxation of plaintiff's possessory interest in the premises. *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Legislative Power Over Taxation.

In matters of taxation, the legislature possesses plenary power, except as limited or restricted by the constitution. *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914); *In re Kessler*, 26 Idaho 764, 146 P. 113 (1915); *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Mortgaged Lands, Merger of Title.

Where ad valorem taxes were not paid on land mortgaged to the state and such land was conveyed to the state in satisfaction of said mortgage, the state then selling it to the original mortgagor, it was held such taxes, interest, penalties and costs were properly canceled. *State ex rel. Langley v. Canyon County*, 67 Idaho 366, 181 P.2d 196 (1947).

Taxables in General.

Statutes held to place stock in state and national banks in the same class as regards

taxation and to be in conformity with terms of federal statutes authorizing assessments on national bank stock and were not illegally discriminatory. *State ex rel. Bank of Eagle v. Leonardson*, 51 Idaho 646, 9 P.2d 1028 (1932).

The water rights were transferred from the canal to the land when the title passed from the United States to the state, and the water right was included as appurtenance in tax on land and passed under tax deed to the land. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

Peas and beans in a warehouse of a corporation engaged in the business of breeding, growing and selling at wholesale peas, beans, and field seeds are subject to taxation as personal property. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Unpatented Land.

The rule generally recognized by courts with reference to taxation of lands for which patent has not yet issued is that when payment in full has been made and settlement and improvement have been had, and final proof thereof has been made, and proper authorities of the interior department have accepted the proof and issued a final receipt to that effect, it operates to transfer such an equitable estate in lands to purchaser and settler as to immediately render land liable to taxation, although the legal title is still held by the United States. *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 191-220.

A.L.R. — Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction. 48 A.L.R.3d 343.

Modern status of the Massachusetts or business trusts. 88 A.L.R.3d 704.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation. 4 A.L.R.4th 837.

63-204. Classes of property. — For the purpose of assessment and property taxation, all property within the jurisdiction of this state is hereby classified as follows:

Class 1. Real Property,

Class 2. Personal Property, and

Class 3. Operating Property. [I.C., § 63-204, as added by 1996, ch. 98, § 3, p. 308.]

63-205. Assessment — Market value for assessment purposes. — (1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or

the rules promulgated by the state tax commission.

(2) Personal property coming into the state after January 1 shall be assessed as of the date of entry into the state in accordance with sections 63-311(3) and 63-602Y, Idaho Code. [I.C., § 63-205, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Lien of personal property taxes on real estate, § 63-206. Personal property from without state, time of assessment, § 63-311.

JUDICIAL DECISIONS

Method of Assessment. In an appeal from a decision of the board of tax appeals, district court did not err by allowing the counties to present de novo evidence of valuation. *Canyon County Bd. of Equalization v. Amalgamated Sugar Co., LLC*, — Idaho —, 137 P.3d 445 (2006).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Migratory livestock.
Taxpayer.

Migratory Livestock. Taxes on migratory livestock, when properly extended on real property roll, become lien on real property of owner. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928). ing with the taxation of real and personal property in Idaho runs the concept that the owner of the record title is the person to be considered as the taxpayer. *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Taxpayer. This chapter cited in connection with the proposition that throughout the statutes deal-

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d., State and Local Taxation, §§ 731-738. **A.L.R.** — “Business situs” of intangibles held in trust in state other than beneficiaries’ domicile. 59 A.L.R.3d 837. **C.J.S.** — 84 C.J.S., Taxation, §§ 454-486.

63-206. Lien of property taxes. — (1) All property taxes levied upon real property shall be a first and prior lien upon the real property assessed therefor, and shall only be discharged by the payment or cancellation of the property taxes as provided in this title.

(2) In addition, all property taxes levied upon personal property or operating property shall be a first and prior lien upon that property and the personal, operating or real property of the same owner thereof, whether the property is exempt from execution or not, and no personal property or operating property of any kind shall be exempt from such lien, except as otherwise provided by law. Such lien shall attach as of the first day of January in that year, or as of the date of entry into the state, or as of the date the property became subject to property taxation, and shall be discharged only by the payment or cancellation of the property taxes as provided in this title.

(3) Property tax liens shall be perpetual and continuous on all personal, operating and real property.

(4) It shall be unlawful for any person, corporation or other owner of real property to destroy the lien of taxes provided for in this section by removing any improvements therefrom or cutting and removing the standing timber thereon without first securing the payment of all delinquencies upon such real property, and property taxes for the year in which such improvements or timber are removed. The lien upon any such improvements or timber shall continue after such improvements have been removed or the timber cut from such real property. Such taxes shall be due and collectible immediately upon the commencement of the severance and unless paid upon the demand of the tax collector it shall be the duty of the county attorney to commence an action for the collection of such taxes in the district court of the county in which the property is situated. Such improvements or timber may be levied upon and sold in the same manner as is now provided by law for the sale of real property upon execution, and the county or any taxing unit affected may maintain an action in the proper court for injunction to restrain the removal of any improvements or the cutting or removal of standing timber from any real property against which there are any unpaid property taxes. [I.C., § 63-206, as added by 1996, ch. 98, § 3, p. 308.]

63-207. Assessment of property. — (1) All real and personal property, except as otherwise provided in title 63, Idaho Code, shall be assessed by the assessor of the county in which it is situated.

(2) All operating property shall be assessed by the state tax commission. [I.C., § 63-207, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Abandonment of highways, § 40-203.

Assessment of equities in state lands, § 63-309.

Assessment of personal property generally, §§ 63-301 — 63-317.

Equities in state land, assessment §§ 58-320, 63-309.

Improvements on public lands, § 63-309.

Personal property defined, §§ 55-102, 73-114.

Property to be defined and classified by law, Const., Art. 7, § 3.

Real property defined, §§ 55-101, 73-114.

Recorded and worked highways, § 40-202.

JUDICIAL DECISIONS

Operating Property.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of

operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Carey Act entry.
Construction.
Escape of like property no defense.
Interest in land taxable.
Mines and mineral lands.
Peas and beans in warehouse.
Sources of taxation.
Standing timber.
Uniform taxation.
Water rights.

Carey Act Entry.

States have no right to define and tax as property interest of entryman upon government land before equitable title passes to him. *Leney v. Twin Falls County*, 40 Idaho 600, 236 P. 531 (1925).

Construction.

This section does not change rule that interest of vendee in contract of sale of realty is subject to mortgage. *Perkins v. Bundy*, 42 Idaho 560, 247 P. 751 (1926).

Escape of Like Property No Defense.

That property of a like character escaped taxation would not relieve a taxpayer from paying its taxes based on a proper assessment of its property. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1954).

Interest in Land Taxable.

Under a former statute, defining personality for tax purposes as "equities in state lands, easements and reservations," mineral reservations were assessable as personalty and not as realty, as against claim that under ejusdem generis rule reservations in state lands only were intended to be classified as personalty, since the reservations in state lands were not taxable. In *re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664 (1936).

Where a Sisterhood after incorporating, purchased land and permitted taxpayers to build dwellings thereon for their residence during their lifetime, thereafter becoming available to other members of the Sisterhood for occupancy, and the tax assessor levied taxes on such properties, the taxpayers could not escape liability for such taxes on the ground that the dwellings were occupied and built under a life tenure only, as an examination of the controlling statutes failed to disclose exemption from taxation of freehold estates such as those held by appellants. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Mines and Mineral Lands.

Under this section, mineral reservations were assessable as personalty and not as

realty, as against the contention that under ejusdem generis rule reservations in state lands only were intended to be classified as personalty, since the reservations in state lands were not taxable. In *re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664 (1936).

Peas and Beans in Warehouse.

Peas and beans in a warehouse of a corporation engaged in a business of breeding, growing, and selling at wholesale peas, beans, and field seeds were subject to taxation as "personal property," and hence taxes imposed upon peas and beans in warehouse were not void ab initio. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Sources of Taxation.

Ad valorem property tax, poll taxes, and license tax on business are not exclusive means of raising state revenue, and the legislature could enact an income tax law. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Standing Timber.

Written instruments conveying all merchantable timber on certain described lands and providing for severance and removal of such timber within reasonable time were taxable under federal revenue law imposing tax on instruments conveying realty. *Milwaukee Land Co. v. Poe*, 27 F.2d 625 (W.D. Wash. 1928), *aff'd*, 31 F.2d 733 (9th Cir. 1929).

Though standing timber is considered and treated as real property, law recognizes that ownership of land may be in one party and ownership of standing timber in another, and provides that land and timber may be assessed separately. *Winton Lumber Co. v. Shoshone County*, 50 Idaho 130, 294 P. 529 (1930).

Uniform Taxation.

All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all

property, real and personal. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Water Rights.

Water right is real estate, and, under a fair construction, is an appurtenance to and an integral part of the land to which said water

right has been dedicated; it passes with the land when conveyed; and its assessment and taxation are included within the assessment and taxation of the land and its appurtenances. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 196, 201-205, 207.

63-208. Rules pertaining to market value — Duty of assessors. —

(1) It shall be the duty of the state tax commission to prepare and distribute to each county assessor and the county commissioners within the state of Idaho, rules prescribing and directing the manner in which market value for assessment purposes is to be determined for the purpose of taxation. The rules promulgated by the state tax commission shall require each assessor to find market value for assessment purposes of all property, except that expressly exempt under chapter 6, title 63, Idaho Code, within his county according to recognized appraisal methods and techniques as set forth by the state tax commission; provided, that the actual and functional use shall be a major consideration when determining market value for assessment purposes.

(2) To maximize uniformity and equity in assessment of different categories of property, such rules shall, to the extent practical, require the use of reproduction or replacement cost less depreciation as opposed to historic cost less depreciation whenever cost is considered as a single or one (1) of several factors in establishing the market value of depreciable property. The state tax commission shall also prepare and distribute amendments and changes to the rules as shall be necessary in order to carry out the intent and purposes of this title. The rules shall be in the form as the commission shall direct, and shall be made available upon request to other public officers and the general public in reasonable quantities without charge. In ascertaining the market value for assessment purposes of any item of property, the assessor of each county shall, and is required to, abide by, adhere to and conform with rules promulgated by the state tax commission. [I.C., § 63-208, as added by 1996, ch. 98, § 3, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Actual and functional.
Consideration of restrictive covenants.
Validity of assessment.

Actual and Functional.

Where, in a property tax evaluation, only nine of the 56 apartment units had been sold as condominiums, the action was remanded

for a determination as to whether the sole appraisal method employed by the county assessor (i.e., the market data method), resulted in an appropriate and fair assessment

given the actual and functional use of the apartment complex. *Fairway Dev. Co. v. Bannock County*, 113 Idaho 933, 750 P.2d 954 (1988).

Consideration of Restrictive Covenants.

Since former similar law required that actual and functional use shall be a major consideration when determining market value for assessment purposes, assessor erred in refusing to consider restrictive covenants limiting use of the property to low-income housing with rent restrictions for the actual and functional use of the property was as rent-restricted, low-income housing. *Greenfield Village Apts. v. Ada County*, 130 Idaho 207, 938 P.2d 1245 (1997).

Validity of Assessment.

The tax assessor's practice of using multipliers to correct the 1965 assessment and to reach the result of approaching full cash value on the average throughout the county, based on his examination of at least three to five of the 850 subdivisions in the county and in some cases as many as forty sales in approximately 300 subdivisions, and not based on tax commission's study of sales of real estate in various subdivisions pertaining to 440 residential properties, the amount of deviation between two studies being very small, was reasonably accurate. *Title & Trust Co. v. Board of Equality*, 94 Idaho 270, 486 P.2d 281 (1971).

RESEARCH REFERENCES

A.L.R. — Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

63-209. Assessor's plat record. — The assessor must have prepared a full, accurate and complete plat record of all parcels of real property within his county. Township, range and section lands shall be platted thereon in such manner as to correspond with the technical description of such lands as described by the government survey thereof. Subdivision, townsite, and metes and bounds lands shall be platted thereon according to the official record thereof. The plats shall be prepared pursuant to rules promulgated by the state tax commission which shall establish scales and other criteria. All parcels of real property shall be numbered pursuant to a uniform numbering system to be established by the state tax commission and such parcel numbers shall be used as one (1) means of identifying such parcels. Such numbers shall be used on all records in county offices and shall appear on valuation assessment and tax notices. All necessary and reasonable expense incurred by the assessor in complying with the provisions of this section shall be a legal claim against the county. [I.C., § 63-209, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — County treasurer ex officio tax assessor, § 31-2102. Soil conservation districts, property tax exempt, § 22-2722(5).

Forest lands and products, taxation, § 63-1701 et seq.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Owner of record title.
Railroad right of way.

Owner of Record Title.

Throughout the statutes dealing with the taxation of real and personal property in Idaho runs the concept that the owner of the record title is the person to be considered as the taxpayer. *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Railroad Right of Way.

An assessment of a portion of a railroad right of way by county assessor was invalid for indefiniteness where assessor did not separately assess right of way on the rolls according to number, or enter accurate description of land designated by number. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 731-752.

63-210. Tax numbers for metes and bounds descriptions. —

(1) The assessor shall give to each tract of land described by metes and bounds a tax number which shall be recorded with the county recorder without fee. This number shall be placed on the property roll to indicate the certain piece of land bearing such number, and entered on the plat record to indicate what tract is designated by such tax number, and no further description of such land shall be necessary upon the property roll. Whenever a tract of land which has been given a tax number is subdivided, the assessor shall give each subdivision a new tax number, which number, with an accurate description of the tract of land designated by such new number, shall be included in his list of tax numbers.

(2) In all cases where the description of any tract of land, or any lot or subdivision of land, or where the description of one (1) or more of the different parts or parcels thereof, cannot, in the judgment of the assessor, be made sufficiently certain and accurate for the purposes of assessment, the assessor shall notify the county recorder thereof, and the county recorder shall thereupon proceed to have such land platted in the same manner as provided for in section 50-1314, Idaho Code. [I.C., § 63-210, as added by 1996, ch. 98, § 3, p. 308.]

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****Railroad Right of Way.**

An assessment of a portion of a railroad right of way by county assessor was invalid for indefiniteness where assessor did not sep-

arately assess right of way on the rolls according to number, or enter accurate description of land designated by number. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

63-211. Abstract of state lands. — (1) It shall be the duty of the director of the state department of lands to furnish to each assessor of each county in the state without fee a copy of each land sale certificate whenever a sale has been held and a certificate has been issued showing the land description, date of sale, purchase price, amount paid in cash, and schedule of annual payments, and a copy of each timber sale contract whenever a sale of timber has been made and contract issued showing date of sale, description of land involved, purchase price, and estimated volume of timber.

(2) It shall also be the duty of the director of the state department of lands to notify the assessor of each county when a cancellation, assignment or reinstatement of a state land sale certificate or a cancellation or assignment of a state timber sale contract has been made.

(3) It shall be the duty of the county tax collector to notify the director of the state department of lands of any property tax delinquency on a state land sale certificate or on a state timber sale contract within thirty (30) days of the date of such delinquency. [I.C., § 63-211, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Director of department of lands, § 58-105.

63-212. Estates — Claimants — Agents — Undivided interest. —

(1) When the property assessed is the unpartitioned property of a deceased person, the name of the heirs, guardian, executor or administrator may be inserted on the property roll, and the payment of property taxes on such property by any such person binds the estate for the repayment of the amount of such property taxes to such person, and binds all parties in interest for the repayment of their just proportions of the amount of such property taxes to such person.

(2) Whenever a person claiming property and desiring to pay the property taxes thereon is not named as the owner he may have his name inserted on the property roll with that of the person named, if so documented with a recordable document.

(3) Whenever a person has an agent for the payment of property taxes, the name of such agent may be inserted upon request, and in the taxpayers index.

(4) An undivided interest in real property may be appraised, assessed and taxed as such. The payment of all property taxes on an undivided interest in any real property assessed as such discharges all liens attached to such undivided interest on account of such property taxes. [I.C., § 63-212, as added by 1996, ch. 98, § 3, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Tenancies in Common.

Interests of tenants in common in mining property may be separately assessed and sold

for delinquent taxes. *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916).

RESEARCH REFERENCES

A.L.R. — Liability of executor administrator, trustee, or his counsel, for interest, pen-

alty, or extra taxes assessed against estate because of tax law violation. 47 A.L.R.3d 507.

63-213. Double assessing prohibited. — (1) Property which has been assessed for taxation in any county in this state shall not be assessed again

for taxation for the same purposes or period of time in any other county in this state for the same year.

(2) In all questions which may arise as to the proper place to assess property for taxation purposes, if between two (2) or more places in the same county, the place for assessing the same shall be determined and fixed by the county commissioners, and if between two (2) or more counties, or different places in two (2) or more counties, the place for assessing the same shall be determined and fixed by the state tax commission, and when fixed shall be binding. [I.C., § 63-213, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Duplicate taxation prohibited, Const., Art. 7, § 5.

63-214. Description of property. — In all proceedings relating to the assessment of property for taxation, or the levy and collection of property taxes, it shall be sufficient to designate the amount of property taxes and the amount, value and description of property by tax number, initial letters, abbreviations, figures, fractions and exponents. Such designations must be sufficiently plain to clearly set forth the amount of property taxes and the amount, value and description of the property. All property which has been sold for property taxes and all foreclosure proceedings on property under this title must be fully and accurately described. [I.C., § 63-214, as added by 1996, ch. 98, § 3, p. 308.]

63-215. Legal description and map of boundaries to be recorded and filed. — (1) Any taxing district which shall be formed or organized hereafter, or which shall change any existing boundaries hereafter, shall cause one (1) copy of the legal description and map prepared in a draftsmanlike manner which shall plainly and clearly designate the boundaries of such district or municipality as formed or organized, or as altered, to be recorded with the county recorder and filed with the county assessor in the counties within which the unit is located and with the state tax commission within thirty (30) days following the effective date of such formation, organization or alteration but no later than the tenth day of January of the year following such formation, organization or alteration. In the case of fire protection districts, the board of county commissioners approving the boundaries shall be responsible for delivering to the assessor and recorder the map and legal description of the amended district boundaries.

(2) Urban renewal agencies shall comply with the requirements of subsection (1) of this section when a revenue allocation area within the jurisdiction of the urban renewal agency is formed or when the boundaries of such an area are altered.

(3) The county assessor, county auditor and state tax commission shall retain on file in their respective offices all copies of legal descriptions of taxing district boundaries and maps filed by the various taxing jurisdictions authorized to impose a levy on property.

(4) The state tax commission shall be responsible for providing copies of uniform tax code area numbers and maps to the county assessor, county auditor and county treasurer and various companies having operating property subject to assessment in the state of Idaho and under the jurisdiction of the state tax commission for assessment and taxation purposes.

(5) Unless otherwise specifically authorized to form with noncontiguous boundaries, or to annex or de-annex properties so as to make noncontiguous boundaries, all taxing districts shall form with and maintain contiguous boundaries. [I.C., § 63-215, as added by 1996, ch. 98, § 3, p. 308; am. 1997, ch. 117, § 12, p. 298; am. 2000, ch. 114, § 2, p. 252.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-216. No state property tax when sales tax is in force. — In any period during which a sales tax is in force in this state, there shall be no levy of the general state property tax permitted in section 9, article VII, of the constitution of the state of Idaho. [I.C., § 63-216, as added by 1996, ch. 98, § 3, p. 308.]

63-217. Filing of material by mail or private delivery services. —

(1) Any report, claim, return, statement or other document or payment dealing in any way or in any manner whatsoever with taxation which is required or authorized to be filed or made to the state of Idaho, or to any political subdivision thereof, which is:

(a) Transmitted through the United States mail, shall be deemed filed or made and received by the state or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. For purposes of this title, a postage meter cancellation shall not be deemed a post office cancellation mark.

(b) Mailed but not received by the state or political subdivision or where received and the cancellation mark is illegible, erroneous or omitted, shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or other document or payment was deposited in the United States mail on or before the date for filing or paying; and in cases of such nonreceipt of any such report, claim, tax return, statement or other document or payment required by law to be filed or made, the sender files with the state or political subdivision a duplicate within fifteen (15) days after written notification is given to the sender by the state or political subdivision of its nonreceipt of such report, claim, tax return, statement, or other document or payment.

(2) If any such report, claim, tax return, statement or other document or payment is sent by United States mail and either registered or certified, a record authenticated by the United States post office of such registration or

certification shall be considered competent evidence that the report, claim, tax return, statement or other document or payment was delivered to the state officer or state agency or officer or agency of the political subdivision to which addressed, and the date of registration or certification shall be deemed the postmarked date.

(3) Any reference in this section to the United States mail shall be treated as including a reference to any delivery service designated by the secretary of the United States department of treasury under section 7502 of the Internal Revenue Code. Any reference in this section to a postmark by the United States postal service shall be treated as including a reference to any date recorded or marked as described in section 7502 of the Internal Revenue Code by any designated delivery service.

(4) If the date for filing any such report, claim, tax return, statement or other document or making any such payment falls upon a Saturday, Sunday or legal holiday, such acts shall be considered timely if performed on the next business day. [I.C., § 63-217, as added by 1996, ch. 98, § 3, p. 308; am. 2004, ch. 28, § 1, p. 45.]

STATUTORY NOTES

Federal References. — Section 7502 of the Internal Revenue Code, referred to in subsection (3), appears as 26 U.S.C.S. § 7502.

63-218. Reproduction of records — Destruction of originals authorized — Admissibility in evidence — Prevalence over previous law. — (1) The state tax commission or any political subdivision of the state of Idaho is hereby authorized to photograph, microphotograph, film or reproduce by other technological means any document or record kept by it, or any tax return or report filed with it by any taxpayer or other person, under any tax law administered or enforced by the state tax commission. Upon reproducing such return, report or record, the state tax commission or any political subdivision of the state of Idaho in its discretion may cause the original records from which reproductions have been made, or any part thereof, to be disposed of or destroyed; provided however, that original tax returns shall be retained for not less than one (1) year.

(2) Photographs, microphotographs, films or other reproductions by technological means of any record as herein provided, shall have the same force and effect as the originals thereof would have had, and shall be treated as originals for the purpose of their admissibility in evidence. Duly certified or authenticated reproductions shall be admitted in evidence equally with the original documents. [I.C., § 63-218, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Cross References. — Documents or books, manner of replacement, § 9-331 et seq. Photographed or digital retention of records generally, § 9-328.

63-219. Uniform property rolls and related documents. — (1) The state tax commission shall develop, maintain and enforce statewide systems

for the preparation of property rolls and related documents and procedures and for uniform parcel numbering. Said systems shall provide related information specified by the state tax commission.

(2) The state tax commission shall prescribe forms and documents to be used to comply with the requirements of subsection (1) of this section when the information contained in said forms and documents is needed by the tax commission. The appropriate county official may request that the state tax commission consider an alternate, but equivalent, system for the preparation of property rolls and related documents. If the county official demonstrates equivalence to the satisfaction of the state tax commission, the state tax commission may, at its discretion, permit the alternate system to be used. Alternate forms or documents to be provided at county expense may be used if submitted to the state tax commission prior to use and if, in the opinion of the state tax commission, the alternate forms or documents are equivalent to the forms or documents provided by the state tax commission.

(3) Forms or documents required to comply with the provisions of subsection (1) of this section may be prescribed by the appropriate county official, provided that the information on said forms or documents is not needed by the state tax commission. Said forms or documents must be provided at county expense and a copy of each separate form or document must be filed with the state tax commission prior to use.

(4) The state tax commission shall, at its expense, provide aid to the counties on numbering, mapping and software for implementation of this program, and shall, at its expense, provide uniform valuation assessment notices to the county assessor and property tax notices to the county tax collector. [I.C., § 63-219, as added by 1996, ch. 98, § 3, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

63-220. Tax extensions as disaster relief. — (1) The board of county commissioners of any Idaho county declared by the governor of the state of Idaho as a natural disaster area may grant an extension of time for any filings or payments required under section 63-302(1), 63-602G, 63-706 or 63-903, Idaho Code, to those persons whose ability to timely comply with their filing or payment requirement is adversely affected by a natural disaster set forth in the declaration.

(2) Before granting any extension the board of county commissioners shall provide a procedure for affected taxpayers to justify the extension and provide such other information as the board may require to support the taxpayer's application.

(3) No extension granted under this section shall be for a period in excess of sixty (60) days.

(4) In all cases where the board has granted an extension under this section, payment of the tax shall not be subject to any late filing penalty or interest if payment of the tax is made on or before the extended due date. Failure to make payments on or before the extended due date will thereafter cause the imposition of penalty and interest.

(5) When, as a result of relief granted under this section, a county official or state agency is unable to comply with a provision in this title requiring an action by a specified date, the action may be delayed only for such reasonably necessary time as the state tax commission approves, but not to exceed sixty (60) days. [I.C., § 63-220, as added by 1997, ch. 64, § 2, p. 135.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1997, ch. 64 declared an emergency. Approved March 13, 1997.

CHAPTER 3

ASSESSMENT OF REAL AND PERSONAL PROPERTY

SECTION.

- 63-301. Time of assessment — Property roll, subsequent property roll and missed property roll.
- 63-301A. New construction roll.
- 63-302. List of taxable personal property.
- 63-303. Assessment of manufactured homes.
- 63-304. Manufactured homes to constitute real property.
- 63-305. Reversal of declaration which treats a manufactured home as real property.
- 63-306. Listing of property by owner, agent or fiduciary.
- 63-307. Ownership identification.
- 63-308. Valuation assessment notice to be furnished taxpayer.
- 63-309. Improvements on exempt and railroad rights-of-way lands — Equity in state property.

SECTION.

- 63-310. Completion and delivery of property roll.
- 63-311. Completion and delivery of subsequent and missed property rolls.
- 63-312. Affidavit to completed roll — Effect of failure to make affidavit.
- 63-313. Special provisions for transient personal property.
- 63-314. County valuation program to be carried on by assessor.
- 63-315. Assessment ratios and the determination of adjusted market value for assessment purposes for school districts.
- 63-316. Adjustment of assessed value — Completion of assessment program by state tax commission — Payment of costs.
- 63-317. Occupancy tax — Procedures.

63-301. Time of assessment — Property roll, subsequent property roll and missed property roll. — (1) The assessor shall complete an assessment of all real and personal property in his county which is subject to assessment by him on or before the fourth Monday of June. In making such assessment, the assessor shall determine, according to recognized appraisal methods and techniques, the market value for assessment purposes of real and personal property. Said assessments shall be entered on the property roll. After the aforesaid date, any property which has been omitted from the property roll shall be entered on the subsequent property roll and submitted to the county commissioners meeting as a board of

equalization, from the fourth Monday of November through the first Monday of December of the current year, or entered on the missed property roll and submitted during the county board of equalization's monthly meeting in January of the following year.

(2) The market value for assessment purposes of each parcel of property subject to assessment shall be listed on the appropriate roll, as defined in subsection (1) of this section, by category of property established and defined pursuant to section 63-109, Idaho Code. [I.C., § 63-301, as added by 1996, ch. 98, § 4, p. 308.]

STATUTORY NOTES

Cross References. — Manufactured homes, assessment, § 63-303. County commissioners as board of equalization, § 63-501.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Adjustments during tax year.
Application.
Assessor's duty.
Determination of true cash value.
Determination of value.
Difficulty in obtaining proof of record.
Logs.
Method of assessment.
Migratory livestock.
Omitted property.
Quarterly reporting system.
Procedure.
Supplemental declarations.
Time.
Validity of assessment.

Adjustments During Tax Year.

Where a county undertakes to update its initial declarations during the course of the tax year, it cannot increase a taxpayer's tax burden to reflect the taxpayer's acquisition of nonexempt property without decreasing that tax burden to reflect the fact that property reported by the taxpayer in an earlier declaration was no longer subject to the county's ad valorem tax. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Application.

This section, as amended in 1927, did not apply to additions to merchant's stock of goods made after second Monday in January. *Preston A. Blair Co. v. Jensen*, 49 Idaho 118, 286 P. 366 (1930).

Assessor's Duty.

The duty of the assessor is to assess all the taxable property of his county at its "full cash value" and he has no legal right or authority to assess property in any other manner or at

any other valuation. *First Nat'l Bank v. Washington County*, 17 Idaho 306, 105 P. 1053 (1909).

Determination of True Cash Value.

Officers are to do the best they can with the means at their disposal to approximate as nearly as may be the unattainable ideal, which is an entirely just or correct valuation of all the property in the county. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Determination of Value.

A proper determination of the market value of taxable property should involve an analysis of multiple factors including the actual cost of the property and its actual sale value. *Merris v. Ada County*, 100 Idaho 59, 593 P.2d 394 (1979).

Although different types of property are by their nature more amenable to valuation by one method of appraisal than another the

touchstone in the appraisal of property for ad valorem tax purposes is the fair market value of that property, and fair market value must result from application of the chosen appraisal method. *Merris v. Ada County*, 100 Idaho 59, 593 P.2d 394 (1979).

Difficulty in Obtaining Proof of Record.

Difficulty or delay in obtaining the proof of a fact does not preclude its existence and operation, and the record of many occurrences and transactions is evidence of what existed at the time of the happening of the event, though the record is not available for many days or months afterwards. *Twin Falls ex rel. Cannon v. Koehler*, 63 Idaho 562, 123 P.2d 715 (1942).

Logs.

Where appellant had possession and an equitable and beneficial ownership in logs he had sufficient interest in such logs for taxation although title was in United States government where logs were in possession of appellant and appellant was at all times operating under a valid contract with the government under which appellant would receive complete ownership and legal title upon compliance with the specific terms of the contract as to scaling and payment. *Tree Farmers, Inc. v. Goeckner*, 86 Idaho 290, 385 P.2d 649 (1963).

Method of Assessment.

Assessment of merchandise of retail store by measuring square feet of floor space occupied by stock of merchandise and comparing the same to floor space occupied by similar mercantile establishments was arbitrary and capricious, hence assessment based on such method was erroneous and excessive. *Appeal of Sears, Roebuck & Co.*, 74 Idaho 39, 256 P.2d 526 (1953).

Migratory Livestock.

Taxes on migratory livestock, when properly extended on real property assessment roll, become lien on real property of owner. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).

Omitted Property.

When a landowner builds a new residence and fails to notify the assessor of the date of occupancy pursuant to § 63-3905 (now repealed), the new residence can constitute "inadvertently omitted property" within the meaning of this section. *Hermann v. Blaine County Bd. of Comm'rs*, 126 Idaho 970, 895 P.2d 571 (1995).

Quarterly Reporting System.

The district court erred in requiring the taxable status of business machines to be determined on a monthly basis rather than on a quarterly basis, since in the interests of efficient recordkeeping and reporting a quarterly reporting system, and not a monthly reporting system, is required, and because property is to be assessed on a quarterly basis. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Procedure.

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Supplemental Declarations.

The Ada County assessor's decision to require supplemental declarations only of certain types of taxpayers who actually did acquire or who were likely to have acquired nonexempt personal property during the 1973 tax year did not result in a violation of the Idaho constitutional requirement of uniformity of taxation. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Time.

Where the county board of equalization reviewed the assessment of a real property interest at its December meeting, at which it was empowered to review assessments of personal property only, and not at the June and July meetings at which it was empowered to equalize assessments of real property or hear complaints in regard thereto, the assessment was improper since the owners of an interest in the real property were not afforded an opportunity to register their complaints that the property was improperly included upon the personal property roll. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Validity of Assessment.

The tax assessor's practice of using multipliers to correct the 1965 assessment and to reach the result of approaching full cash value on the average throughout the county, based on his examination of at least three to five of the 850 subdivisions in the county and in some cases as many as forty sales in approximately 300 subdivisions, and not based on tax commission's study of sales of real estate in various subdivisions pertaining to 440 residential properties, the amount of deviation between two studies being very small, was reasonably accurate. *Title & Trust Co. v. Board of Equality*, 94 Idaho 270, 486 P.2d 281 (1971).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur., 2d State and Local Taxation, § 704 et seq. **C.J.S.** — 84 C.J.S., Taxation, § 390 et seq.

63-301A. New construction roll. — (1) The county assessor shall prepare a new construction roll, which shall be in addition to the property roll, which new construction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the new construction, suitably detailed to meet the requirements of the individual county;
- (c) A description of the land and its change in use, suitably detailed to meet the needs of the individual county;
- (d) The amount of taxable market value added to the property on the current year's property roll that is directly the result of new construction or a change in use of the land or both;
- (e) The amount of taxable market value added as provided in subsection (3)(g) of this section as a result of dissolution of any revenue allocation area.

(2) As soon as possible, but in any event by no later than the first Monday in June, the new construction roll shall be certified to the county auditor and a listing showing the amount of value on the new construction roll in each taxing district or unit be forwarded to the state tax commission on or before the fourth Monday in July. Provided however, the value shown in subsection (3)(f) of this section shall be reported to the appropriate county auditor by the state tax commission by the third Monday in July and the value sent by the county auditor to each taxing district. The value established pursuant to subsection (3)(f) of this section is subject to correction by the state tax commission until the first Monday in September and any such corrections shall be sent to the appropriate county auditor, who shall notify any affected taxing districts.

(3) The value shown on the new construction roll may include the taxable market value increase from:

- (a) Construction of any new structure that previously did not exist; or
- (b) Additions or alterations to existing nonresidential structures; or
- (c) Installation of new or used manufactured housing that did not previously exist within the county; or
- (d) Change of land use classification; or
- (e) Property newly taxable as a result of loss of the exemption provided by section 63-602W, Idaho Code; or
- (f) The construction of any improvement or installation of any equipment used for or in conjunction with the generation of electricity and the addition of any improvement or equipment intended to be so used, except property that has a value allocated or apportioned pursuant to section 63-405, Idaho Code, or that is owned by a cooperative or municipality, as those terms are defined in section 61-332A, Idaho Code, or that is owned by a public utility, as that term is defined in section 61-332A, Idaho Code, owning any other property that is allocated or apportioned. No replacement equipment or improvements may be included; or

(g) Increases in value over the base value of property on the base assessment roll within an urban renewal revenue allocation area that has been terminated pursuant to section 50-2909(4), Idaho Code, to the extent that this increment exceeds the incremental value as of December 31, 2006, or, for revenue allocation areas formed after December 31, 2006, the entire increment value. Notwithstanding other provisions of this section, the new construction roll shall not include new construction located within an urban renewal district's revenue allocation area, except as provided in this subsection (3)(g).

(4) The amount of taxable market value of new construction shall be the change in net taxable market value that is attributable directly to new construction or a change in use of the land or loss of the exemption provided by section 63-602W(3), Idaho Code. It shall not include any change in value of existing property that is due to external market forces such as general or localized inflation, except as provided in subsection (3)(g) of this section. [I.C., § 63-301A, as added by 1997, ch. 117, § 13, p. 298; am. 1998, ch. 95, § 2, p. 341; am. 2002, ch. 143, § 6, p. 394; am. 2002, ch. 344, § 1, p. 962; am. 2003, ch. 8, § 1, p. 14; am. 2003, ch. 16, § 15, p. 48; am. 2007, ch. 135, § 1, p. 395.]

STATUTORY NOTES

Amendments. — This section was amended by two 2002 acts — ch. 143, § 6, effective July 1, 2002, and ch. 344, § 1, effective retroactively to January 1, 2000.

The 2002 amendment, by ch. 143, added subsection (3)(f) (now (3)(g)).

The 2002 amendment, by ch. 344, added the second sentence in subsection (2) and also added a subsection designated (3)(f).

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 8, § 1, inserted “on or before the fourth Monday in July” in the first sentence in subsection (2), added “or” at the end of subsection (3)(f), and redesignated the former duplicate subsection (3)(f) as subsection (3)(g).

The 2003 amendment, by ch. 16, § 15, added “or” at the end of subsection (3)(f) and redesignated the former duplicate subsection (3)(f) as subsection (3)(g).

The 2007 amendment, by ch. 135, added subsection (1)(e); in the introductory language in subsection (3), inserted “taxable

market”; in subsection (3)(g), substituted “this increment exceeds the incremental value as of December 31, 2006, or, for revenue allocation areas formed after December 31, 2006, the entire increment value” for “this increment has not been previously included on any new construction rolls, provided however, the increased value during the existence of the revenue allocation area is due to changes identified in subsections (a) through (e) of this subsection,” and added the last sentence; and added the exception in subsection (4).

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 3 of S.L. 1998, ch. 95 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 19, 1998.

Section 2 of S.L. 2007, ch. 135 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-302. List of taxable personal property. — (1) The assessor shall leave at the office, place of business or residence of each personal property owner, or mail to such personal property owner at his last known post office address, a form with notice requiring such personal property owner to make a correct list of taxable personal property. Every personal property owner so required shall enter a true and correct statement of such personal property

and the ownership thereof, which statement shall be signed and verified by the oath of the personal property owner or his agent listing such personal property, and shall be delivered to the assessor, not later than March 15. The assessor shall thereupon determine the market value for assessment purposes of such personal property and enter the same on the property roll. However, if for any reason the assessor shall fail to contact such personal property owner, the failure shall not impair or invalidate any assessment, nor will such failure relieve the personal property owner or his agent of the responsibility to obtain such declaration and to comply with the requirements of this title. Any willful failure to personally contact each personal property owner, shall be deemed malfeasance in office and grounds for the removal of the assessor from office.

(2) If such person fails to make and deliver the list as required, the assessor may list and assess such personal property according to his best judgment and information.

(3) Whenever a taxpayer's list of taxable personal property discloses personal property having a situs for purposes of taxation in another county in this state, the assessor must immediately make a copy of that portion of such list for each county in which such personal property is situated, and transmit the same by mail to the assessor of the proper county, who must, upon receipt of such copy, enter such personal property upon the property roll therein, unless such personal property has already been entered. The assessor shall strike from the original list all personal property so disclosed as having a situs in another county, and shall assess and enter only the balance of the personal property in his county. [I.C., § 63-302, as added by 1996, ch. 98, § 4, p. 308.]

STATUTORY NOTES

Cross References. — Refusal to list property a misdemeanor, § 18-6301.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Purpose of statement.

Refusal to list property.

Purpose of Statement.

Since the purpose of the taxpayer's declaration form was to provide the assessor with adequate information about taxpayer, taxpayer could not challenge the sufficiency of the form on the grounds that it did not state when meetings of board of equalization were scheduled and it failed to inform taxpayer of the full market value and the assessed value of his property. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

Refusal to List Property.

It was the duty of the taxpayer to furnish the assessor, on demand, the statement on oath and if he neglected or failed to do so, it was the duty of the assessor to assess such taxable property within his jurisdiction and in that case the taxpayer could not recover taxes paid under protest on property so assessed. *Erwin v. Hubbard*, 4 Idaho 170, 37 P. 274 (1894).

63-303. Assessment of manufactured homes. — Manufactured homes shall be assessed as other residential housing and such assessments shall be entered on the property roll. [I.C., § 63-303, as added by 1996, ch. 98, § 4, p. 308; am. 2004, ch. 27, § 2, p. 43.]

63-304. Manufactured homes to constitute real property. — (1) A manufactured home may constitute real property if the running gear is removed and:

(a) If the manufactured home becomes permanently affixed to a foundation:

(i) On land which is owned or being purchased by the owner or purchaser of said manufactured home; or

(ii) On land which is being leased by the owner or purchaser of the manufactured home if such home is being financed in accordance with the guidelines of the federal home loan mortgage corporation, the federal national mortgage association, the United States department of agriculture or any other entity or agency that requires, as part of its financing program, similar restrictions on ownership and actions affecting title and possession, provided that if a county takes a tax deed to the manufactured home the county shall not be liable for any delinquent or ongoing leases, rents or any other liabilities owed due to the placement of such property; and

(b) If the owner or purchaser of a manufactured home records with the county recorder in the county in which the manufactured home will be situated a statement of intent to declare the manufactured home as real property.

(2) The exercise of said option shall require all county assessors to treat those manufactured homes whose owners or purchasers have exercised said option as any other site-built residence and shall permit lending institutions to treat said manufactured homes as real property or as any other residence.

(3) The form of the declaration shall be prescribed by the state tax commission. Any form used shall have attached to it the certificate of origin or the original title to the manufactured home to allow a reversal of the declaration as provided in section 63-305, Idaho Code. [I.C., § 63-304, as added by 1996, ch. 98, § 4, p. 308; am. 2002, ch. 61, § 1, p. 130.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.

Legislative intent.

Application.

Where parties entered into a deed of trust which encumbered a parcel of land, and the lender, in approving the loan, relied upon an appraisal which valued both the land and the mobile home, the court concluded that the parties intended to include both the land and

the mobile home within the encumbrance of the deed of trust. In *re Sasinouski*, 52 Bankr. 67 (Bankr. D. Idaho 1985).

Legislative Intent.

This section was intended to benefit buyers of mobile homes, not burden their financiers;

it provides a method for a mobile home purchaser to legally bind himself to treat his mobile home as real property. Such a filing is to protect a lender by forcing a borrower to commit himself, rather than to protect the

mobile home purchaser from a lender who would otherwise provide long-term financing. In re Sasinouski, 52 Bankr. 67 (Bankr. D. Idaho 1985).

63-305. Reversal of declaration which treats a manufactured home as real property. — (1) Once a manufactured home has been converted to real property under the provisions of section 63-304, Idaho Code, it shall be deemed a fixture and an improvement to the real property to which it is affixed. Physical removal shall be prohibited without the consent of all persons or entities who, at the time of removal have an interest in the real property or title to any estate in the real property to which the manufactured home has been affixed. The homeowner shall obtain a title report from a title insurance company which shall establish the identity of those individuals or entities whose consent must be obtained. Consent to removal of the manufactured home shall not be required from the owners of rights-of-way, easements or owners of subsurface rights.

(2) Physical removal shall include, without limitation, the separation of the manufactured home from the foundation system, except for the temporary purposes of repair or improvement thereto.

(3) At least thirty (30) days before the manufactured home is to be removed, the homeowner shall give written notice of the intended removal to the county assessor in the county in which the real property is located. The county assessor shall require written evidence that the necessary consents have been obtained from those persons or entities identified in the title report as required in the provisions of subsection (1) of this section. In addition, removal shall be prohibited until the county tax collector has given written approval for the removal of the manufactured home by certifying that all property taxes, due and payable, have been paid.

(4) The homeowner shall, within five (5) days of removal, make application for the issuance of a certificate of title for the manufactured home. Prior to the issuance of a certificate of title, the declaration of reversal shall be recorded. Immediately upon issuance of a certificate of title, the manufactured home shall again become personal property for the purpose of financing and for the purpose of taxation shall be assessed pursuant to section 63-302, Idaho Code.

(5) The state tax commission shall prescribe the forms to be used by the county assessor to reverse the option exercised under the provisions of section 63-304, Idaho Code, which created the real property designation.

(6) A homeowner who physically removes a manufactured home in violation of the provisions of this section shall be liable for all legal costs and fees, together with actual expenses incurred to restore the real property to its former condition. Any judgment obtained pursuant to this section may be recorded as a lien upon the manufactured home removed from the property. [I.C., § 63-305, as added by 1996, ch. 98, § 4, p. 308; am. 2002, ch. 61, § 2, p. 130.]

63-306. Listing of property by owner, agent or fiduciary. — (1) All property required to be listed and assessed under the provisions of this title

shall be listed by the owner or his agent, except as hereinafter provided:

- (a) The property of a minor shall be listed by his guardian, or by the person having such property in charge.
 - (b) The property of a person determined by a court to be legally incompetent, by the person having charge of such property.
 - (c) The property of a person for whose benefit it is held in trust, by the trustee.
 - (d) The property of a deceased person, by the executor or administrator.
 - (e) The property of a person or corporation whose assets are in the hands of a receiver, by the receiver or his agent.
 - (f) The property of a corporation, by the president, secretary, treasurer or other proper agent or officer.
 - (g) The property of a firm, partnership, limited liability company, association or company, or other such entities as recognized by the state of Idaho, by a partner, member or agent.
 - (h) Property in litigation in possession of a receiver, or of any county officer, or officer of a court, by the custodian thereof.
- (2) Whenever property is listed to any person in a representative capacity, his representative designation must be added to his name, and such property must be entered upon the property roll separate and apart from any individual property of such person. [I.C., § 63-306, as added by 1996, ch. 98, § 4, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Ownership of Property.

Throughout the statutes dealing with the taxation of real and personal property in Idaho runs the concept that the owner of the

record title is the person to be considered as the taxpayer. *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

63-307. Ownership identification. — (1) The assessor shall ascertain the current ownership of land from documents recorded in the county recorder's office and/or from evidence of ownership furnished to the assessor which is admissible at trial in a civil action pursuant to section 54-103, Idaho Code.

(2) Whenever any person is the owner of, or has contracted to purchase, either an undivided or defined portion of any real property assessed as a whole, such owner or purchaser, upon producing his deed, contract or other muniment of title, to the assessor at any time before the assessor has completed the assessment for that year, may have such assessment changed and corrected accordingly.

(3) No mistake in the name of the owner or failure to designate such owner shall in any manner affect the validity of the assessment or tax lien.

(4) If the ownership of any property is not known, such property must be assessed in the name of "unknown owner." [I.C., § 63-307, as added by 1996, ch. 98, § 4, p. 308; am. 1997, ch. 215, § 1, p. 635.]

63-308. Valuation assessment notice to be furnished taxpayer. —

(1) The valuation assessment notice required under the provisions of this chapter shall be delivered to the taxpayer, or to his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address no later than the first Monday in June. The original valuation assessment notice so mailed or delivered must contain notices of all meetings of the board of equalization prescribed by this title for the purposes of equalizing assessments of property, and for granting exemptions from taxation. The notice shall, in clear terms, inform the taxpayer of the assessed market value for assessment purposes of his property for the current year, and his right to appeal to the county board of equalization. The state tax commission may require that other data or information be shown on the form.

(2) In case any changes or corrections are made by the assessor from the original valuation assessment notice, the assessor shall immediately deliver or mail a corrected valuation assessment notice to the taxpayer, or his agent or representative.

(3) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a true copy of the valuation assessment notice on or before the second Monday in June.

(4) For property entered and assessed on the subsequent property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be delivered to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the fourth Monday in November.

(5) For property entered and assessed on the missed property roll pursuant to section 63-311, Idaho Code, the valuation assessment notice shall be delivered to the taxpayer, his agent or representative, or mailed to the taxpayer, or to his agent or representative at his last known post office address as soon as possible after it is prepared, but not later than the first Monday of January of the following year. [I.C., § 63-308, as added by 1996, ch. 98, § 4, p. 308.]

STATUTORY NOTES

Cross References. — County commissioners as a board of equalization, dates of meetings, § 63-501.

Taxpayer's property declaration, § 63-302.

63-309. Improvements on exempt and railroad rights-of-way lands — Equity in state property. — (1) All taxable improvements on government, Indian, state, county, municipal or other lands exempt from taxation, and all improvements on all railroad rights-of-way owned separately from the ownership of the rights-of-way upon which the same stands, or in which nonexempt persons have possessory interests, shall be assessed and taxed as personal property.

(2) Property of the state of Idaho or any department, agency or subdivision thereof, or any other property not subject to property taxation to the owner thereof by reason of the legal status of the owner, held under contract of sale or lease with option to purchase, with lease moneys applicable to the purchase price, by any person, corporation or other association for his or its exclusive use, shall be subject to the purchaser or lessee for property taxation. When such property is held under a contract of sale or other agreement whereby on certain payment or payments the legal title is or may be acquired by such person, firm, corporation or association, such property shall be assessed to such person, firm, corporation or association and taxed without deduction on account of the whole or any part of the purchase price or other sum due on such property remaining unpaid. The lien for any such property tax shall neither attach to, impair or be enforced against any interest of the state of Idaho or any department, agency or subdivision thereof.

(3) Refusal to pay the property tax levied upon any equity in state property by the owner upon demand by the tax collector shall operate as forfeiture of such equity. [I.C., § 63-309, as added by 1996, ch. 98, § 4, p. 308.]

STATUTORY NOTES

Cross References. — Equities in state lands subject to assessments, § 58-320.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application. *
 Assessment value.
 Improvements on leaseholds.
 Listing fatal to assessment.
 Reason for enactment.

Application.

This section applies to ad valorem taxation of personal property and does not apply to a sales tax determination. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

Assessment Value.

In determining value at which land purchased from state should be assessed, the trial court properly directed that the contract purchase price be employed for the sole purpose of determining purchaser's equity in the land. *Stewart v. Common Sch. Dist. No. 17*, 66 Idaho 118, 156 P.2d 194 (1945).

Improvements on Leaseholds.

Where land in Idaho owned by the United States government in trust for certain Indian allottees was leased by the United States to plaintiff for 25 years with an option to renew

for an additional 25 years, and plaintiff built a potato storage warehouse on the land with a useful life of 50 to 75 years with the ownership of the warehouse, by the terms of the lease, to be in the United States, but the use thereof to belong to plaintiff for the duration of the lease; plaintiff was not obliged to pay Idaho ad valorem taxes on the warehouse since it was owned by the United States and therefore exempt from such taxation, and no Idaho statute provided for taxation of plaintiff's possessory interest in the premises. (In 1969 this section was amended to provide for taxation of such possessory interests.) *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Listing Fatal to Assessment.

Improvements on lands of the United States are not real estate and listing thereof

as such is fatal to assessment. *People v. Owyhee Lumber Co.*, 1 Idaho 420 (1871).

Reason for Enactment.

At the time of enactment of this section the legislature was aware of the fact that normally improvements on real estate become a part of the realty, but in the case of improve-

ments on government or state lands, an exception to this general law was made because of the fact that the real estate on which improvements were situate could not be assessed or taxed, by reason of the government or state ownership. *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

OPINIONS OF ATTORNEY GENERAL

Former § 63-1223 which was repealed effective January 1, 1997, and is similar to this section, addressed the taxation of improvements on "Indian lands ... exempt from taxation," and where nothing in the section implied what land may or may not be taxable or exempt, absent a statute specifically broaden-

ing the tax exemption of Indian lands beyond that required by federal law, it must be assumed that the legislature intended to recognize the tax-exempt status of Indian lands only to the extent required by federal treaties and statutes. OAG 96-2.

63-310. Completion and delivery of property roll. — The assessor must certify the completion of the property roll on or before the fourth Monday of June in each year, and must, on or before that date, deliver the completed property roll, together with all claims for exemptions from assessment or taxation to the clerk of the board. The property roll and claims for exemptions must remain in the office of the clerk until the second Monday of July for the inspection of all persons interested. [I.C., § 63-310, as added by 1996, ch. 98, § 4, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeal to district court.
Validity of assessment.

Appeal to District Court.

On appeal from the county board of equalization, the district court was required to explicitly find on what basis other property in the county was generally assessed, and the general rate of assessment made by the assessor and board on lands of appealing party, before bringing assessment on appealing party's land in line with other assessments in the

county. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Validity of Assessment.

The failure of the assessor to take or subscribe such affidavit shall not in any manner affect the validity of such assessment. *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

63-311. Completion and delivery of subsequent and missed property rolls. — (1) The assessor shall assess all personal property and all improvements to real property except as otherwise provided in section 63-317, Idaho Code, which have been completed or discovered between the fourth Monday of June and the fourth Monday of November and which were not included on the property roll delivered on the fourth Monday of June, and shall enter such assessments on the subsequent property roll to be delivered to the clerk of the board on the fourth Monday of November of the current year.

(2) If other real or personal property is discovered and assessed between the fourth Monday of November and December 31st, it shall be assessed and entered on the missed property roll to be delivered to the clerk of the board on the first Monday of January of the following year.

(3) Personal property coming into the state from without the state after the first day of January shall be assessed as of the date of its entry into the state as follows; if before the first day of April, for its full market value for assessment purposes; if on the first day of April and before the first day of July, for three-fourths ($3/4$) of its full market value for assessment purposes; if on the first day of July and before the first day of October, for one-half ($1/2$) of its full market value for assessment purposes; and if on the first day of October and on or before the thirty-first day of December, for one-fourth ($1/4$) of its full market value for assessment purposes, and the taxes so levied thereupon shall be a first and prior lien on such property from the date of its entry into the state so assessed, and upon all other personal or real property, belonging to the same owner, and no personal property of any kind shall be exempt from such lien. [I.C., § 63-311, as added by 1996, ch. 98, § 4, p. 308.]

JUDICIAL DECISIONS

Improper Placement on Rolls.

Costs and attorney fees were awarded to a taxpayer in an appeal from a county assessor's decision to assess property as non-operating after it had already been assessed as operating by the Idaho tax commission be-

cause there was no reasonable basis for the decision to include the real property on the tax rolls under § 63-311. The assessment amounted to double taxation. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

63-312. Affidavit to completed roll — Effect of failure to make affidavit. — (1) The county assessor, at the time of delivery of the property roll, subsequent property roll or missed property roll to the clerk of the board, must subscribe an affidavit that the property roll, subsequent property roll or missed property roll is, to the best of his knowledge and ability, a true and complete statement of market value for assessment purposes of all property subject to appraisal by him and that he has faithfully complied with all the duties imposed upon him under law.

(2) Failure by the assessor to make the affidavit shall not affect the validity of any appraisal entered on the property roll, subsequent property roll or missed property roll. The making of such affidavit, however, is declared to be a duty pertaining to the office of the assessor, and when the same is to be made by the deputy assessor it shall be the duty of the assessor to have the same properly made. In every case where the said affidavit is omitted from any assessment roll as completed as aforesaid, the board of county commissioners must require the assessor to make the same, or have the same made by the deputy assessor, and upon refusal or neglect of such assessor to supply such affidavit forthwith, the chairman of the board of county commissioners must immediately file in the district court in the county any information, in writing, verified by his oath, charging such assessor with refusal or neglect to perform the official duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law. [I.C., § 63-312, as added by 1996, ch. 98, § 4, p. 308.]

63-313. Special provisions for transient personal property. —

(1) All transient personal property shall be listed by the owner and shall show the quantity, name, model, serial number, if any, year of manufacture, date of purchase, cost, whether new or used and other identifying information required by the county assessor. The list of transient personal property shall identify the owner of the property and shall be filed with the home county assessor on or before the first day of November of each year. The owner of transient personal property may elect to treat as his home county that county in which he maintains his residence or usual place of business or in which the transient personal property is usually kept. The report shall be made on forms prescribed by the state tax commission and shall identify periods of thirty (30) days or more during which the personal property is located in a county, specifying the location of the transient personal property for each month of the current calendar year with a projection of the location for the remaining months of November and December.

(2) The county assessor of the home county or the receiving county of the listing shall file within ten (10) days with the county assessor of all counties identified on the report a copy of the report. Each county so identified shall then place a prorated assessment on such personal property on the subsequent or missed property roll only for the length of time that the personal property was located in their county.

(3) In the event that any transient personal property has been or will be taxed for the current year in another state, the property shall be taxed for only that portion of the year that the transient personal property is kept and does remain in the state of Idaho.

(4) The provisions of this section shall not apply to transient personal property in transit through this state, or to transient personal property sold by the owner thereof in the home county upon which the taxes for the full year have been paid or secured, which said transient personal property is kept, moved, transported, shipped or hauled into and remaining in another county, and there kept or remaining either for the purpose of use or sale within the current year. [I.C., § 63-313, as added by 1996, ch. 98, § 4, p. 308.]

63-314. County valuation program to be carried on by assessor.

— (1) It shall be the duty of the county assessor of each county in the state to conduct and carry out a continuing program of valuation of all taxable properties under his jurisdiction pursuant to such rules as the state tax commission may prescribe, to the end that all parcels of property under the assessor's jurisdiction are assessed at current market value. In order to promote uniform assessment of property in the state of Idaho, taxable property shall be appraised or indexed annually to reflect current market value. In order to achieve this goal, all taxable property in a county shall be appraised at least once every five (5) years, except as provided in subsection (6). Beginning in 2003, or year one (1) of any five (5) year cycle not less than fifteen percent (15%) of the taxable properties in the county shall be appraised during that year; by the end of year two (2) not less than thirty-five percent (35%) of the taxable properties in the county shall have

been appraised during that year and the previous year; by the end of year three (3) not less than fifty-five percent (55%) of the taxable properties in the county shall have been appraised during that year and the previous two (2) years; by the end of year four (4) not less than seventy-five percent (75%) of the taxable properties in the county shall have been appraised during that year and the previous three (3) years; and by the end of year five (5) all one hundred percent (100%) of the taxable properties within the county shall have been appraised during that year and the previous four (4) years. Annually, all taxable property, not appraised that year, shall be indexed to reflect current market value for assessment purposes using market value property transactions and results of the annual appraisal of taxable property. The county assessor shall maintain in the respective offices sufficient records to show when each parcel or item of property was last appraised. The appraisal required by this section shall include a plan outlining the continuing valuation program. Said plan shall be submitted to the state tax commission for approval on or before the first Monday in February, 1997, and no less frequently than every fifth year thereafter. The state tax commission shall not approve any plan that fails to provide for adequate appraisal and valuation of all taxable properties in any county.

(2) The state tax commission is hereby authorized, empowered and directed to promulgate rules for the implementation of this program, and to provide any such county assessor with such supervision and technical assistance as may be necessary.

(3) The county commissioners of each county shall furnish the assessor with such additional funds and personnel as may be required to carry out the program hereby provided, and for this purpose may levy annually a property tax of not to exceed four-hundredths percent (.04%) of the market value for assessment purposes on all taxable property in the county to be collected and paid into the county treasury and appropriated to the property valuation fund which is hereby created.

(4) If compliance with the requirements of subsection (1) is not obtained, or if any county fails to meet the goals set in subsection (1), the state tax commission may proceed as required by section 63-316, Idaho Code. If a county fails to meet the timelines in subsection (1), the state tax commission shall require a remediation plan.

(5) As used in this section the term "adequate appraisal and valuation of all taxable properties in any county" means a process which includes a field inspection of not less than the number of taxable properties necessary to meet the requirements of subsection (1). Appraisal also includes collection, verification and analysis of market value sales, applicable income and expense data and building cost information, and application of this information to predict market value.

(6) The board of county commissioners may request that the Idaho state tax commission grant an extension of the five (5) year reappraisal deadline set forth in subsection (1). The request shall be in writing and shall set forth the reason(s) that the county is unable to complete the reappraisal process as required by subsection (1) and shall set forth the measures the county will undertake in order to complete the reappraisal program within the

extension of time requested. In no case shall an extension exceed two (2) years. The state tax commission may approve or deny any request for an extension and shall notify the board of county commissioners of its decision in writing. The state tax commission shall not approve any extension absent a showing by the county of extraordinary circumstances. Extraordinary circumstances may include, but are not limited to, natural disasters or unforeseen circumstances that result in extreme financial hardship to the county. Circumstances that will not qualify for an extension may include, but are not limited to, failure to adequately fund the county valuation program as provided by this section, malfeasance, or mismanagement by a current elected official. The state tax commission shall not grant the extension provided in this section if studies conducted by the commission indicate that any category of property affected by such extension is not assessed at market value.

(7) The Idaho state tax commission shall report back to the Idaho house of representatives revenue and taxation committee and the senate local government and taxation committee whenever an extension authorized under subsection (6) is granted. [I.C., § 63-314, as added by 1996, ch. 98, § 4, p. 308; am. 1997, ch. 117, § 14, p. 298; am. 2000, ch. 196, § 1, p. 486; am. 2003, ch. 34, § 1, p. 152.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1,

1997. Approved March 15, 1997.

Section 2 of S.L. 2000, ch. 196 declared an emergency retroactively to January 1, 2000 and approved April 4, 2000.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constraints on valuation program.

Contract for revaluation.

— Indemnity clause.

Cyclical revaluation program.

Multi-year valuation program.

Constraints on Valuation Program.

While personnel and budget constraints are not an absolute defense under this section, the limitations of time and staff are factors to be taken into consideration since the court must be cognizant of the practicalities of budget constraints when it comes to discharging governmental functions. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Contract for Revaluation.

Contracts between county and appraiser for revaluation of county real property for tax purposes were not void as violative of Const., Art. 8, § 3 which prohibits creation of unlimited county liability without voter approval;

the expenditures at issue here were not only ordinary and necessary and authorized by the general laws of the state, but were required and mandated. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

— Indemnity Clause.

Indemnity clause in contract between county and appraiser, which clause relieved appraiser of liability in connection with revaluation of county real property, was not void as against public policy nor did it violate Const., Art. 8, § 3 prohibiting creation of an unlimited liability on the county without voter approval. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho

590, 661 P.2d 756 (1983).

Cyclical Revaluation Program.

This section prior to the 1979 amendment contemplated a five year cyclical revaluation program, but such a cyclical program was not mandatory. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Multi-Year Valuation Program.

A multi-year program of property valuation for all properties within county assessor's

jurisdiction pursuant to this section, prior to its 1979 amendment, and which immediately reassessed plaintiff's property but delayed other property until the final year of the plan, did not violate Const., Art. VII, § 5, since the plan was not arbitrary, capricious nor discriminatory as to plaintiff. *Brammer v. Latah County Assessor*, 102 Idaho 437, 631 P.2d 219 (1981).

63-315. Assessment ratios and the determination of adjusted market value for assessment purposes for school districts. — (1) The provisions of this section shall apply only to charter districts levying a maintenance and operation levy in the prior calendar year. For the purpose of this section, adjusted market value for assessment purposes shall be the adjusted market value for assessment purposes of all property assessed for property tax purposes for the year referred to in sections 33-802 and 33-1002, Idaho Code.

(2) The state tax commission shall conduct a ratio study to annually ascertain the ratio between the assessed value and the market value for assessment purposes of all property assessed for property tax purposes. Said ratio study shall be conducted in accordance with nationally accepted procedures. From the ratio so ascertained the state tax commission shall compute the adjusted market value of all property assessed for property tax purposes.

(3) The ratio shall be computed in each school district and applied to the market value for assessment purposes within each school district.

(4) Sales used in determining the ratio required by this section shall be arm's length, market value property sales occurring in the year beginning on October 1 of the year preceding the year for which the adjusted market value is to be determined. The state tax commission may, at its discretion, modify the sales period when doing so produces provably better representativeness of the actual ratio in any school district. The state tax commission may also add independently conducted appraisals when the state tax commission believes that this procedure will improve the representativeness and reliability of the ratio.

(5) Whenever the state tax commission is unable to determine with reasonable statistical certainty that the assessed value within any school district differs from the market value for assessment purposes, the state tax commission may certify the assessed value to be the adjusted market value of any school district.

(6) The state tax commission shall certify the adjusted market value of each school district to the state department of education and each county auditor no later than the first Monday in April each year. The state tax commission shall prepare a report indicating procedures used in computing the adjusted market value and showing statistical measures computed in the ratio study. This report shall be submitted to the state department of education at the same time as the certification of adjusted market value. The report of the state tax commission shall also be made available for public inspection in the office of the county auditor.

(7) The state tax commission shall promulgate rules to implement the ratio study described in this section. [I.C., § 63-315, as added by 1996, ch. 98, § 4, p. 308; am. 1998, ch. 102, § 1, p. 350; am. 2006 (1st E.S.), ch. 1, § 15.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, added the first sentence in Subsection (1).

2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Compiler's Notes. — Section 1 of S.L.

63-316. Adjustment of assessed value — Completion of assessment program by state tax commission — Payment of costs. —

(1) Whenever the state tax commission, after a hearing, determines that any county assessor or the county commissioners in assessing property in the county subject to taxation have failed to abide by, adhere to and conform with the laws of the state of Idaho and the rules of the state tax commission in determining market value for assessment purposes, the state tax commission shall order the county assessor and county commissioners of such county to make the necessary changes or corrections in such assessments and if the county assessor and the county commissioners refuse or neglect to comply with such order, the state tax commission is authorized to and shall forthwith adjust or change the property roll in such county.

(2) In lieu of the hearings and actions permitted in subsection (1) of this section, the state tax commission shall monitor each county's implementation of the continuing appraisal required in section 63-314, Idaho Code, and may require each county to file such reports of its progress at implementation of such continuing appraisals as the commission may find necessary. In the event that the commission finds that any county is failing to meet the requirements of section 63-314, Idaho Code, the commission may order that county's indexing or appraisal or reappraisal programs be conducted under the exclusive and complete control of the state tax commission and the results of such programs shall be binding upon the county officers of the county for which ordered. Payments for the actual cost of such programs shall be made from the sales tax distribution created in section 63-3638, Idaho Code, and the amount of such payments shall be withheld from the payments otherwise made under the provisions of section 63-3638(9)(c) and (9)(d), Idaho Code, to the county for which indexing, appraisal or reappraisal has been ordered, and this subsection shall constitute the necessary appropriation to accomplish such payments, any other provision of law notwithstanding. [I.C., § 63-316, as added by 1996, ch. 98, § 4, p. 308; am. 2000, ch. 207, § 1, p. 527; am. 2001, ch. 130, § 2, p. 451.]

63-317. Occupancy tax — Procedures. — (1) All real property subject to property taxation shall be valued and taxed based upon its status as of January 1 of each tax year. Improvements, other than additions to existing improvements, constructed upon real property shall not be subject to property taxation during the year of construction other than that portion

actually in place as of January 1 of each calendar year; new manufactured housing shall not be subject to property taxation during the first year of occupancy if occupied after January 1. For the purposes of this section, "new manufactured housing" means manufactured housing, whether real or personal, never previously occupied.

(2) There is hereby levied an occupancy tax upon all newly constructed and occupied residential, commercial and industrial structures, including new manufactured housing, except additions to existing improvements or manufactured housing, prorated for the portion of the year for which the structure was occupied. The occupancy tax shall be upon those improvements or new manufactured housing for that portion of the calendar year in which first occupancy occurs. The occupancy tax does not apply to operating property. For the purposes of this section, the term "occupied" means:

- (a) Use of the property by any person as a residence including occupancy of improvements or use in storage of vehicles, boats or household goods, provided such use is not solely related to construction or sale of the property; or
- (b) Use of the property for any business or commercial purpose unrelated to the construction and sale of the property; or
- (c) Any possessory use of the property for which the owner received any compensation or consideration.

(3) The owner of any newly constructed improvement or new manufactured housing, as described in this section, upon which no occupancy tax has been charged shall report to the county assessor that the improvement or new manufactured housing has been occupied. As soon as practical after receiving such a report, the county assessor shall appraise and determine the market value for assessment purposes.

(a) At the time the county assessor determines the market value for assessment purposes of any improvement, he shall allow as an offset against the market value of the improvement, the market value of any portion of that improvement which was existing on January 1 and placed upon the property roll.

(b) Upon completion of the appraisal, the county assessor shall notify the owner of the appraisal, and further shall notify the owner of their right to apply for the exemption provided in sections 63-602G and 63-602X, Idaho Code. If the owner applies for and meets the requirements for such exemption within thirty (30) days of the notification by the county assessor, the exemption shall be extended to the newly constructed and occupied residential structures in compliance with section 63-602G, Idaho Code, notwithstanding limitations requiring occupancy as of January 1 of the tax year.

(c) In the event that the owner fails to report to the county assessor that the property is ready for occupancy, the assessor shall notify the county board of equalization, who may impose as penalty an additional amount equal to five percent (5%) of the tax for each month following the date of first occupancy during which the report is not made, to a maximum of twenty-five percent (25%) of the tax.

(4) Appeals of the market value for assessment purposes shall be resolved in the same manner as all other appeals of valuation by the board of equalization.

(5) The occupancy tax calculated upon the values set by the county assessor, and any penalty imposed by the board of equalization shall be collected in the same manner as all other property taxes.

(6) An occupancy tax lien shall be imposed in the manner provided in section 63-206, Idaho Code.

(7) Occupancy taxes shall be billed, collected and distributed in the same manner as all other property taxes. [I.C., § 63-317, as added by 1996, ch. 98, § 4, p. 308; am. 1997, ch. 117, § 15, p. 298; am. 2003, ch. 364, § 1, p. 972; am. 2004, ch. 260, § 1, p. 735; am. 2006, ch. 302, § 1, p. 931.]

STATUTORY NOTES

Cross References. — All property subject to taxation, § 63-203.

Amendments. — The 2006 amendment, by ch. 302, in the introductory paragraph of subsection (2), inserted “and industrial,” and added the third sentence.

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: “Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52,

title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code.”

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 2004, ch. 260 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

Section 4 of S.L. 2006, ch. 302 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

JUDICIAL DECISIONS

ANALYSIS

Exclusive remedy.

Failure to exhaust remedies.

Exclusive Remedy.

Taxpayers' exclusive remedy for attacking the county's valuation of their property was the procedure set forth in subsection (4) of this section; taxpayers tried to characterize their claims as a defective tax assessment notice, but in substance they sought judicial relief from the county assessor's decision determining their occupancy tax liability. *Castrigno v. McQuade*, 141 Idaho 93, 106 P.3d 419 (2005).

Failure to Exhaust Remedies.

District court properly concluded that it lacked subject matter jurisdiction to consider the taxpayers' request for a property tax refund where the taxpayers had not exhausted their administrative remedies; it was apparent that the claim for a property tax refund was in fact an attempt to appeal their occupancy tax assessment. *Castrigno v. McQuade*, 141 Idaho 93, 106 P.3d 419 (2005).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Failure to report.

Tax liability upon date of occupancy.

Failure to Report.

When a landowner builds a new residence and fails to notify the assessor of the date of occupancy pursuant to this section, the new residence can constitute "inadvertently omitted property" within the meaning of § 63-306. *Hermann v. Blaine County Bd. of Comm'rs*, 126 Idaho 970, 895 P.2d 571 (1995).

Tax Liability Upon Date of Occupancy.

In construing this section, the legislature intended for owners to be liable for taxes on

the improvement from the date of occupancy, and if they do not notify the assessor of the date of occupancy, they are still liable for the tax, plus interest and penalties. *Hermann v. Blaine County Bd. of Comm'rs*, 126 Idaho 970, 895 P.2d 571 (1995).

CHAPTER 4

APPRAISAL, ASSESSMENT AND TAXATION OF OPERATING PROPERTY

SECTION.

- 63-401. Operating property assessed by state tax commission.
- 63-402. Nonoperating property assessed by county assessor.
- 63-403. Operator representative of owner.
- 63-404. Operator's statement — Arbitrary assessment.
- 63-405. Assessment of operating property.
- 63-406. Attendance at assessment hearing.
- 63-407. Appeal of operating property assessments.

SECTION.

- 63-408. Reexamination of value — Complaint by assessor.
- 63-409. Appeals from state tax commission valuations of operating property.
- 63-410. Certification of value to counties — Comparisons — Special meeting — Escaped assessments.
- 63-411. Special provisions for private railcar fleets — Notice of delinquency — Collection of delinquency.

63-401. Operating property assessed by state tax commission. — Operating property, completed or under construction, shall be assessed by the state tax commission. The state tax commission shall identify property to be included as operating property for assessment purposes. Property assessed by the state tax commission shall not be subject to another assessment by any county assessor. A decision by the state tax commission under this section may only be appealed as provided in sections 63-407 and 63-409, Idaho Code. [I.C., § 63-401, as added by 1996, ch. 98, § 5, p. 308; am. 1998, ch. 400, § 2, p. 1249; am. 2002, ch. 135, § 1, p. 370.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2002, ch. 135 declared an emergency retroactively to January 1, 2002. Approved March 20, 2002.

JUDICIAL DECISIONS

ANALYSIS

Factors considered in valuation.
Operating property.

Factors Considered in Valuation.

Where certain regulatory assets did not generate income, the Idaho tax commission did not err by failing to add them to the cost approach in valuing the property. *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 109 P.3d 170 (2005).

Operating Property.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property,

depending upon the commission's definition of operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after

the same property had already been assessed as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 402-415.

63-402. Nonoperating property assessed by county assessor. — All property belonging to any person owning, operating or constructing any public utility or railroad, wholly or partly within this state, not included within the meaning of the term "operating property" as defined in this title, namely, property not reasonably necessary for the maintenance and operation of such public utility or railroad, including land or buildings rented by a company or corporation as lessee which is used as or in connection with its business, such as business offices, warehouses, service centers, moorage grounds or docks, vacant lots and tracts of land, and lots and tracts of land with the buildings thereon not used or intended to be used in the operation of such public utility or railroad, also tenement and resident property, except section houses, also hotels and eating houses, not situated adjacent to the main track of any such railroad, shall be assessed by the assessor of the county wherein the same is situated. [I.C., § 63-402, as added by 1996, ch. 98, § 5, p. 308.]

JUDICIAL DECISIONS

Operating Property.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of

operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

63-403. Operator representative of owner. — Any person operating a public utility, railroad or private railcar fleet in this state shall be representative of every title and interest in the operating property and franchises of said public utility, railroad or private railcar fleet as owner, lessee or otherwise, and notice to such person, or his agent or representative, shall be notice to all interests in such property for the purpose of taxation. The assessment of such operating property in the name of the owner, lessee or operating company, shall be deemed and held to be an assessment of all title and interest in such property of every kind and nature. [I.C., § 63-403, as added by 1996, ch. 98, § 5, p. 308.]

63-404. Operator's statement — Arbitrary assessment. — (1) Every person owning, operating or constructing, either as owner or lessee, any public utility, railroad or private railcar fleet which is not exempt from taxation under the provisions of this title, shall prepare or cause to be

prepared an annual statement showing all property subject to assessment by the state tax commission, together with such pertinent information as may be required on forms supplied by the state tax commission for such purposes, which statement and forms must be signed by the owner or lessee, or the president, secretary, auditor, superintendent or principal accounting officer or agent of such person, and delivered to the state tax commission on or before such time as the state tax commission may determine, and the state tax commission must file such statement and forms in its office.

(2) The statement must contain such information as the state tax commission determines to be necessary for it to properly assess the operating property. This information shall include, unless otherwise specified, such a general description of the property of such owner or lessee situated or operated in the state of Idaho as would be sufficient to identify the same for all purposes of assessment; the entire length of the system, the length of the system within this state, the length of the line owned and the length of the line operated for the whole system and in this state being separately shown; the total number of miles of each line within the state, the number of miles of main line, branch line, second track, siding and spurs being shown and the number of miles within any county, and within any incorporated city, and within any school or other taxing district into or through which said line extends; the total number of shares of capital stock for the whole system; the amount authorized, the amount issued, the amount outstanding and the dividends paid thereon being separately shown; the market and actual value of the shares of capital stock for the whole system; the funded debt for the whole system; and a detailed statement of all series of bonds, debentures and other securities forming part of the funded debt, at par value, with date of issue, date of maturity, rate of interest and interest paid; the market and actual cash values of such series of funded debt for the whole system; a detailed statement of all capital stock and bonds or other securities of such person, or of other persons, owned by or held in trust, the par value and market and actual value of the same; the entire gross receipts and gross expenses for the entire system each year, ending on the thirty-first day of December; and such other matters and things as may be required in the annual statement supplied by the state tax commission.

(3) In addition to the statement required by this section, every person filing such statement shall, at the same time, furnish to the state tax commission unless otherwise specified, certified copies of the annual reports of the board of directors or other officers to the stockholders, and the annual reports made to the surface transportation board, federal communications commission, federal energy regulatory commission and the securities exchange commission or their successor agencies.

(4) If any person or officer refuses or neglects to furnish the annual statement, list, or copies of the reports required to be furnished under the provisions of this chapter, or refuses or neglects to appear before the state tax commission, or to answer under oath all questions propounded to him in relation to matters necessary to be known by the commission in order to discharge its duties in the assessment of his property or the property of the

person represented by him, then the commission shall make an arbitrary assessment of such property, except as otherwise provided in section 63-411, Idaho Code, which shall be as fair and equitable as it may be able to make from the best information it possesses, and any such person shall be estopped to question or impeach any such assessment in any hearing or proceeding thereafter. [I.C., § 63-404, as added by 1996, ch. 98, § 5, p. 308; am. 1997, ch. 117, § 16, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. force and effect retroactive to January 1, 1997, ch. 117 declared an emergency and 1997. Approved March 15, 1997. provided that §§ 1 — 40 should be in full

63-405. Assessment of operating property. — (1) The state tax commission must assess all operating property at a meeting of the commission convening on the second Monday of August in each year, and must complete the assessment of such property on the fourth Monday in August.

(2) The state tax commission shall determine the system value and calculate the allocation and apportionment of the system value for all operating property and specifically determine:

(a) The number of miles and the value per mile of each railroad in the state and for each taxing district in which such railroad may exist.

(b) The number of miles and the value per mile of each telephone corporation in the state and for each taxing district in which such telephone corporation may exist.

(c) The number of miles and the value per mile of each pipeline in the state and for each taxing district in which such pipeline may exist.

(d) The number of miles and the value per mile of each water company under the jurisdiction of the public utilities commission in the state, and for each taxing district in which such water company may exist. The value per mile of any line included in this subsection, except railroads, shall be determined by dividing the total value of such line within the state by the number of miles of such line within the state. The value per mile of railroad line shall be determined by apportionment of the total value of line within the state. The apportionment shall be based twenty percent (20%) on the ratio of line miles in the state to line miles in the county; forty percent (40%) on the ratio of net ton miles in the state to net ton miles in the county; and forty percent (40%) on the ratio of station revenues in the state to station revenues in the county. All operating property of railroads shall be apportioned to the counties as part of the railroad line in the county. The apportionment for taxing districts shall be the same as the apportionment among counties.

(e) The system value, the number of miles and the value per mile of each electric current transmission line and each electric current distribution line in each county separately, and for each taxing district within said county in which such transmission and distribution lines may exist. The value per mile of any line included in this subsection shall be determined by dividing the apportioned value of such line within each county by the number of miles of such line within said county.

(f) The system value of private railcar fleets entering or standing in Idaho in the year preceding the constituted lien as provided in section 63-411(3), Idaho Code.

(g) The system value and calculate the allocation and apportionment of the system value for all other operating property.

(3) On and after January 1, 2004, any newly installed or constructed equipment located within a city corporate limit or within five (5) miles of a city corporate limit and used for and in conjunction with the thermal generation of electricity shall be apportioned based on physical location. For purposes of this subsection newly installed or constructed equipment used for and in conjunction with the thermal generation of electricity shall not include the remodeling, retrofitting, rehabilitation, refurbishing or modification of an existing electrical generation facility, or integration or transformation facilities such as substations or transmission lines. Notwithstanding the provisions of section 63-301A, Idaho Code, property apportioned based on physical location pursuant to this subsection shall be placed on the new construction roll.

(4) If the value of property of any company assessable under this section is of such a nature that it cannot reasonably be apportioned on the basis of rail, wire, pipeline mileage, such as microwave and radio relay stations, the tax commission may adopt such other method or basis of apportionment to the county and taxing districts in which the property is situate as may be feasible and proper. [I.C., § 63-405, as added by 1996, ch. 98, § 5, p. 308; am. 1997, ch. 117, § 17, p. 298; am. 1998, ch. 400, § 3, p. 1249; am. 2004, ch. 105, § 1, p. 379; am. 2006, ch. 302, § 3, p. 931.]

STATUTORY NOTES

Cross References. — Correction assessments, procedure, § 63-410.

Amendments. — The 2006 amendment, by ch. 302, added the last sentence in subsection (3).

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full

force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 2004, ch. 105 declared an emergency retroactively to January 1, 2004. Approved March 19, 2004.

Section 4 of S.L. 2006, ch. 302 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

JUDICIAL DECISIONS

Indian Reservations.

Where fuel supplier sold fuel to indian reservation without directly going on to state lands, that state could not properly levy a tax on the fuel absent a clear congressional in-

tent. *Goodman Oil Co. v. Idaho State Tax Comm'n*, 136 Idaho 53, 28 P.3d 996 (2001), cert. denied, 534 U.S. 1129, 122 S. Ct. 1068, 151 L. Ed. 2d 971 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Assessment of property.

Constitutionality.

Electric transmission lines.

Railroad valuation.

Time of assessment.

Valuation.

- Public utilities commission.
- Railroad property.

Assessment of Property.

The state board of equalization (now state tax commission) is clothed by statute with authority to assess certain classes and kinds of property, and it has a right to exercise a fair discretion in expressing its judgment as to the valuation of such property, and when it has once acted and there is no fraud shown in its judgment, its action is not subject to review. *Ada County v. Bottolfson*, 61 Idaho 363, 102 P.2d 287 (1940).

Constitutionality.

This section is not unconstitutional because it provides a different tax treatment of the operating property of electric public utilities as contrasted with the tax treatment of the operating property of all other utilities and railroads. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

Although each county throughout the state is entitled to tax the assessed value of the operating property of electric utilities located within that county's boundaries, the fact that one county may have a larger or smaller amount of such operating property within its borders as contrasted with some other county does not render this section violative of the constitution. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

The classifications created in this section, i.e., electric utilities as contrasted with all other utilities and railroads, are nonsuspect; therefore, such classification will withstand an equal protection challenge if there is any conceivable state of facts which will support it. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

The mere fact that the amount of taxable operating property located within the state differs from one county to another does not render this section constitutionally prohibited "local" legislation; further, this section is not "special" in nature, thereby rendering it violative of Const., Art. 3, § 19. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

The uniformity clause of Const., Art. 7, § 5 only requires that the tax rate shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax; hence, the fact that under the provisions of this section, the "value per mile" of operating property of an electric utility will differ as between various taxing districts does not render the statute violative of Const., Art. 7, § 5. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

Electric Transmission Lines.

Board of equalization (now state tax commission) should determine assessed valuation

of electric current transmission lines and operating companies by counties instead of by state as a whole, and each county should collect taxes upon assessed valuation of property within its territorial limits but said board has no power to apportion valuations to the different counties of state as its function ends with determining total value of electric company within county and total mileage of its lines. *Kootenai County v. State Bd. of Equalization*, 31 Idaho 155, 169 P. 935 (1917).

Railroad Valuation.

Where railroad line is double tracked, second track should not be valued and assessed as a separate and distinct line. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

In computing length of railroad line, sidings and spurs need not be included. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

Time of Assessment.

Provisions of this section as to time of convening and completing assessment are for benefit of the public and not the taxpayer and are, therefore, directory; thus assessment made December 4 after investigation, report, and recommendation by tax commission was not void. *Idaho Ry., Light & Power Co. v. Monk*, 218 F. 682 (D. Idaho 1914).

Valuation.

—Public Utilities Commission.

Valuation by public utilities commission for rate-making purposes may be adopted as full cash value for taxation purposes. *Washington Water Power Co. v. Kootenai County*, 270 F. 369 (9th Cir. 1921), modified on other grounds, 273 F. 524 (9th Cir. 1921).

There is no provision that findings of value of public utilities commission shall be binding on state board of equalization (now state tax commission), but upon a hearing before said board (commission) for a reduction of assessment, such findings are admissible in evidence and may be regarded as *prima facie* just and reasonable. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

—Railroad Property.

Where railroad line is double tracked, second track should not be valued and assessed as a separate and distinct line. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

In computing length of railroad line, sidings and spurs need not be included. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

Board of equalization (now state tax commission) was not required in apportioning value of railroad lines for the purpose of taxation to exclude operating property within

separate taxing units. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

63-406. Attendance at assessment hearing. — The state tax commission may, for the purpose of securing evidence, facts or information to enable it to properly assess any operating property, require the attendance of the person, or any officer, manager or agent of such person, whose property is to be assessed, and require him to answer, under oath, all questions propounded which, in the judgment of the commission, would assist it in fixing the value of such property, whether such person, officer, manager or agent resides within or without this state. [I.C., § 63-406, as added by 1996, ch. 98, § 5, p. 308.]

63-407. Appeal of operating property assessments. — Every person whose property is to be assessed by the state tax commission shall, upon request therefor in writing, be entitled to a hearing before the commission in relation to the assessment on his property or the assessment of other property in the state, and the commission shall, upon any such request, fix a time for such hearing within the period in which such assessment must be made, and such hearing shall be conducted in such manner as the commission may direct. [I.C., § 63-407, as added by 1996, ch. 98, § 5, p. 308.]

STATUTORY NOTES

Cross References. — Correction assessments, procedure, § 63-410.

JUDICIAL DECISIONS

Appealing Assessments.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of

operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

DECISIONS UNDER PRIOR LAW

Nature of Hearing.

Taxpayer who has been afforded the opportunity of appearing before board (now commission) and presenting his arguments does not have the right, as in trial of a case in court, to be present during the entire time

board (now commission) has under consideration the valuation of his property, and, in absence of fraud, cannot complain of action taken at an adjourned meeting at which he was not present. *Idaho Ry., Light & Power Co. v. Monk*, 218 F. 682 (D. Idaho 1914).

63-408. Reexamination of value — Complaint by assessor. — The state tax commission shall, upon complaint by a county assessor, examine the valuation and allocation of value of property assessable on a statewide basis any part of which is allocable to his county. [I.C., § 63-408, as added by 1996, ch. 98, § 5, p. 308.]

JUDICIAL DECISIONS

Appealing Assessments.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of

operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

63-409. Appeals from state tax commission valuations of operating property. — (1) Any taxpayer or county assessor who is aggrieved by a state tax commission decision assessing a taxpayer's operating property may file an appeal to the district court of Ada county or, if such operating property is located in only one (1) county, to the district court in and for the county in which such operating property is located. The appeal shall be filed within thirty (30) days after service upon the taxpayer of the decision. The appeal may be based upon any issue presented by the taxpayer to the state tax commission and shall be heard by the district court in a trial de novo without a jury in the same manner as though it were an original proceeding in that court. Nothing in this section shall be construed to suspend the payment of taxes pending appeal. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal. Any final order of the district court under this section shall be subject to appeal to the Idaho supreme court in the manner provided by the Idaho appellate rules.

(2) In any appeal taken pursuant to this section, the burden of proof shall fall upon the party seeking affirmative relief to establish that the valuation from which the appeal is taken is erroneous, or that the state tax commission erred in its decision regarding a claim that certain property is exempt from taxation, the value thereof, or any other relief sought before the state tax commission. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The court may affirm, reverse, modify, or remand any order of the state tax commission, and shall grant other relief, invoke such other remedies and issue such orders, in accordance with its decision, as appropriate. [I.C., § 63-409, as added by 1996, ch. 98, § 5, p. 308; am. 2003, ch. 266, § 1, p. 703.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2003, ch. 266 declared an emergency. Approved April 8, 2003.

JUDICIAL DECISIONS

ANALYSIS

Appealing assessments.

—Substantial evidence review.

Appealing Assessments.

Idaho tax commission was required to first determine if property should be classified as operating property. Then, and only then, could an assessor either petition for a writ of review to dispute the classification or assess the property, if it was non-operating property, depending upon the commission's definition of operating property. Therefore, a district court properly granted summary judgment in favor of a taxpayer in a case where a county assessor assessed property as non-operating after the same property had already been assessed

as operating by the commission. *Union Pac. Land Res. Corp. v. Shoshone County Assessor*, 140 Idaho 528, 96 P.3d 629 (2004).

—Substantial Evidence Review.

Proper standard of review in an appeal from a district court's trial de novo of a decision of the Idaho tax commission is substantial evidence, and not on the record of the agency action. *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 109 P.3d 170 (2005).

63-410. Certification of value to counties — Comparisons — Special meeting — Escaped assessments. — (1) On or before the first Monday of September in each year the chairman of the state tax commission, or his designee, must prepare and transmit certified statements of the taxable value of operating property by the commission to the county auditors of the several counties of this state. The certified statements shall show each type of operating property separately, shall show the taxable value of the operating property, and shall show the taxable value of operating property to be apportioned to each of the various taxing districts within a county, as provided in section 63-405, Idaho Code. The Idaho taxable value of private railcar fleets shall be apportioned to the several counties as provided in section 63-405, Idaho Code.

(2) Each county auditor, upon receipt of certified statements of the taxable value of operating property apportioned to his county, shall compare the same with the previous year's taxable values, and if any errors are made by the state tax commission or if in the opinion of the county auditor any property in the county subject to assessment by the state tax commission, has not been assessed by the state commission or that any assessment as certified is erroneous it shall be the duty of the county auditor, as soon as any error or omission in such statement is discovered, to forthwith notify the chairman of the state tax commission of such error or omission, with as full an explanation as can be made by such county auditor. The county auditor shall send a duplicate copy of any such notice and explanation sent to the chairman of the state tax commission, to the office of the owner or nearest managing agent of any property which may be affected by any change in assessment under the provisions of this section.

(3) The governor may call a special meeting of the state tax commission for the purpose of correcting any errors made or to assess, allocate, and apportion any operating property which may have been omitted. Notice of at least ten (10) days of such special meeting shall be mailed by the chairman of the state tax commission to the owner or nearest managing agent of any property which may be affected by any change in assessment as originally

certified. The procedure in the special meeting shall be as nearly as possible the same as provided in section 63-406, Idaho Code. Corrected statements shall be certified in the same manner as the original statements.

(4) Any property which has escaped taxation in the previous year shall be assessed by said commission on an equalized value, as with other property assessed in the preceding year, and such value shall be added to the value of the assessment for the current year. [I.C., § 63-410, as added by 1996, ch. 98, § 5, p. 308.]

63-411. Special provisions for private railcar fleets — Notice of delinquency — Collection of delinquency. — (1) In case any such private railcar fleet shall fail or refuse to make the annual statement herein required within the time above specified, or shall make a false annual statement, the state tax commission shall proceed to assess the property of such private railcar fleet so failing, and shall add fifty percent (50%) to the value thereof, as ascertained and determined by the commission.

(2) The president or other officer of every railroad company whose lines run through, in or into this state shall, on or before such time as may be determined by the state tax commission, furnish to said commission a statement, verified by the affidavit of the officer or person making the same, showing the total number of miles made by the cars of every such private railcar fleet on their lines, branches, sidings, spurs and warehouse tracks in this state during the year ending on the thirty-first day of December last past. The state tax commission shall declare the date for the filing of the statement in its rules.

(3) The state tax commission shall determine the system value of private railcar fleets utilizing statements and data furnished by the railroads and private railcar operators, and such other pertinent information deemed necessary by the state tax commission. The state tax commission shall also be responsible for the allocation of the system value of private railcar fleets taxable in this state. In developing the allocation method, the state tax commission may use and consider any of the following factors or criteria:

- (a) An actual count of cars in this state;
- (b) The ratio between the mileage traveled by taxpayers' cars in this state as compared with the mileage traveled by taxpayers' cars everywhere;
- (c) Such other factors or criteria as the state tax commission may deem appropriate.

(4) Private railcar fleets having an Idaho taxable value of five hundred thousand dollars (\$500,000) or more shall be apportioned to where said cars were present in each county as determined by the state tax commission. The state tax commission shall certify the taxable value to the county auditor of each county showing the amounts of taxable value to be apportioned to the qualified taxing districts. The county auditor shall cause the taxable value to be entered upon the tax roll in the same manner as all other properties. The taxes shall be collected in the same manner as other operating property taxes by the county tax collector as provided by law.

(5) Private railcar fleets having an Idaho taxable value of less than five hundred thousand dollars (\$500,000) shall not be apportioned to counties.

The state tax commission hereby is empowered to charge, levy and collect the property tax so determined on the private railcar fleets under five hundred thousand dollars (\$500,000) having a taxable situs in the state and such property shall be treated as personal property for taxing purposes.

(a) The state tax commission shall determine the property tax to be charged on the property covered by each such assessment by applying to the taxable value thereof the average tax rate in the state for the current year on private railcar fleets having an Idaho taxable value equal to or greater than five hundred thousand dollars (\$500,000). In the event no private railcar fleets are assessed for five hundred thousand dollars (\$500,000) or more in the current year, then the average property tax rate shall be the average tax rate on all taxable property for the prior year.

(b) Each property tax so charged and levied shall constitute a perpetual lien as of January 1 of the year of assessment on all the operating property of the private railcar fleet within this state and shall be payable in the same manner and at the same due dates provided by law in respect to property taxes on personal property payable in the several counties.

(c) In collecting such property taxes, the state tax commission is hereby authorized to pursue any or all of the rights, remedies or processes provided by law for the collection of a delinquency on personal property.

(d) All moneys collected by the state tax commission as provided under this subsection shall be paid forthwith to the state treasurer for transfer to the public school income fund.

(6) Whenever any person is delinquent in the payment of any obligation imposed by law, the state tax commission may give notice of the amount of the delinquency by registered mail to any railroad company over whose line or lines in this state the cars of said person have been transported, or are being transported, and which said railroad company has in its possession or under its control any credits or other personal property belonging to that person, or owes any debts to the delinquent.

(a) After receiving the notice the railroad company so notified shall neither transfer nor make other disposition of the credits, personal property, or debts until the state tax commission consents to a transfer or disposition, or until thirty (30) days elapse after receipt of the notice.

(b) All railroad companies so notified shall advise the state tax commission within five (5) days after receipt of the notice of all such credits, personal property, or debts in their possession, under their control, or owing by them.

(7) Whenever any railroad company advises the state tax commission that it has within its possession or under its control any credits or personal property belonging to a person with a delinquency, or owes any debt to that person, and the amount thereof, the state tax commission may thereupon issue a warrant of distraint and have the same served upon any such railroad company. Service of said warrant upon an agent of such railroad company within this state shall constitute valid service. Any railroad company so served shall pay over to the state tax commission the sum of any credits belonging to that person, or any debts owing to that person, whenever such credits or debts are less than the delinquency, penalty and

costs; or shall pay over to the state tax commission the amount of the delinquency, penalty and costs, whenever such credits or debts are greater, and shall deduct the sum so paid over from the credits or debts due that person. [I.C., § 63-411, as added by 1996, ch. 98, § 5, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1995, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Changing regulations permitted.

Presumption of correction.

Regulations may not be ignored.

Changing Regulations Permitted.

Since this section authorizes the tax commission to adopt regulations governing this aspect of taxation, it of course is free to abolish, modify or change its regulation if it perceives that the application of that regulation results in inequality or inequity. Idaho State Tax Comm'n v. Railbox Co., 116 Idaho 909, 782 P.2d 32, rehearing denied, 117 Idaho 365, 788 P.2d 180 (1989).

Presumption of Correction.

The value placed on property by assessors for ad valorem purposes, is presumed to be correct. The burden is upon the taxpayer to

show by clear and convincing evidence that he is entitled to relief. Idaho State Tax Comm'n v. Railbox Co., 116 Idaho 909, 782 P.2d 32, rehearing denied, 117 Idaho 365, 788 P.2d 180 (1989).

Regulations May Not be Ignored.

In assessing ad valorem tax on railroad boxcars the tax commission was not permitted to ignore its own regulation in an attempt to search out special circumstances rendering the regulation meaningless. Idaho State Tax Comm'n v. Railbox Co., 116 Idaho 909, 782 P.2d 32, rehearing denied, 117 Idaho 365, 788 P.2d 180 (1989).

CHAPTER 5

EQUALIZATION OF ASSESSMENTS

SECTION.

- 63-501. Meeting of commissioners as a board of equalization.
- 63-501A. Taxpayer's right to appeal.
- 63-502. Function of board of equalization on assessments.
- 63-503. New and additional assessments.
- 63-504. Lien of unpaid personal property taxes on real property.
- 63-505. Production of evidence by county officials and others.
- 63-506. Notice to taxpayer of new assessments and changes.
- 63-507. Record of proceedings.

SECTION.

- 63-508. Completion of property roll after equalization.
- 63-509. Delivery of rolls to county auditor — Abstracts of rolls.
- 63-510. Notification of valuation due to state tax commission.
- 63-511. Appeals from county board of equalization.
- 63-512 — 63-513c. [Reserved.]
- 63-513d. [Repealed.]
- 63-514 — 63-516. [Reserved.]
- 63-517. [Repealed.]

63-501. Meeting of commissioners as a board of equalization. —

(1) The county commissioners of each county shall convene as a board of equalization at least once in every month of the year up to the fourth Monday of June for the purpose of equalizing the assessments of property on the property roll and shall meet on the aforesaid date in each year:

- (a) To complete the equalization of assessments on all property which has not yet been equalized;
- (b) To grant, allow or deny applications for exemption from property tax valuation; and
- (c) To hear appeals of assessment of property which are received on or before the end of each county's normal business hours on the fourth Monday of June.

Upon meeting to complete the equalization of assessments, the board of equalization shall continue in session from day to day until equalization of the assessments of such property has been completed and shall also hear and determine complaints upon allowing or disallowing exemptions under chapter 6, title 63, Idaho Code. The board of equalization must complete such business and adjourn as a board of equalization on the second Monday of July, provided that the board of equalization may adjourn any time prior to the aforesaid date when they have completed all of the business as a board of equalization.

The county assessor or his designee shall attend all meetings of the county commissioners in session as a board of equalization and he may make any statements or introduce testimony and examine witnesses on questions before the board of equalization relating to the assessments.

(2) The county commissioners of each county in this state shall meet as a board of equalization on the fourth Monday of November in each year for the purpose of:

- (a) Equalizing the assessments of all property entered upon the subsequent property roll;
- (b) Determining complaints and hearing appeals in regard to the assessment of such property;
- (c) Allowing or disallowing exemptions and cancellations claimed under the provisions of this title affecting the assessment or taxation of property entered upon the rolls, and having a settlement with the assessor and tax collector.

The board of equalization shall complete its business and adjourn on or before the first Monday of December in each year, but if other personal or real property is discovered and assessed after the subsequent board of equalization has adjourned, and is entered on the missed property roll, the taxpayer may appeal that assessment to the county commissioners meeting as a board of equalization, for the purposes stated in subsection (2)(a), (b) and (c) of this section, during its monthly meeting in January of the following year, provided however, that said meeting must be no sooner than the first Monday in January. [I.C., § 63-501, as added by 1996, ch. 98, § 6, p. 308.]

STATUTORY NOTES

Cross References. — Appeals from action of board of equalization, § 63-511.

Cancellation and refund of unlawful taxes, § 63-1302.

County commissioners authorized to levy taxes, § 31-811.

Duties with reference to assessment of net profits of mines, § 63-2810.

State tax commission created, Const., Art. 7, § 12.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.

Construction.

Statutory remedy exclusive.

Application.

The county board of equalization at its December meeting has not been empowered by the legislature to hear complaints as regards assessments of real property, consequently such board was not empowered to equalize assessments of real property or hear complaints in regard thereto except at the board's June and July meetings as provided by statute, and since such board at its December meeting could only be concerned with equalization of assessments upon personal property, therefore in considering the property herein involved, an interest in real property, the appellants were not afforded an opportunity to register their complaints that the property was improperly included upon the personal property roll. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. *Tobias v.*

State Tax Comm'n, 85 Idaho 250, 378 P.2d 628 (1963).

Construction.

Under R.C., § 1697 assessor was not required to be present, and no penalty was prescribed in the statute for assessor not being present, and the statute did not require the record to show his presence. *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

Statutory Remedy Exclusive.

Where taxpayer alleged excessive assessments on his personal property arising from the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administrative process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur.2d, State and Local Taxation, §§ 795-816.

63-501A. Taxpayer's right to appeal. — (1) Taxpayers may file an appeal of an assessment with the county board of equalization. An appeal shall be made in writing on a form provided by the county board of equalization or assessor and must identify the taxpayer, the property which is the subject of the appeal and the reason for the appeal. An appeal of an assessment listed on the property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of June. An appeal of an assessment listed on the subsequent property roll must be filed on or before the end of the county's normal business hours on the fourth Monday of November. An appeal of an assessment listed on the missed property roll must be filed on or before the board of equalization adjourns on the day of its

January meeting. The board of equalization may consider an appeal only if it is timely filed.

(2) Appeals from the county board of equalization shall be made pursuant to section 63-511, Idaho Code. [I.C., § 63-501A, as added by 1996, ch. 98, § 6, p. 308; am. 1997, ch. 117, § 18, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-502. Function of board of equalization on assessments. — The function of the board of equalization shall be confined strictly to assuring that the market value for assessment purposes of property has been found by the assessor, and to the functions provided for in chapter 6, title 63, Idaho Code, relating to exemptions from taxation. It is hereby made the duty of the board of equalization to enforce and compel a proper classification and assessment of all property required under the provisions of this title to be entered on the property rolls, and in so doing, the board of equalization shall examine the rolls and shall raise or cause to be raised, or lower or cause to be lowered, the assessment of any property which in the judgment of the board has not been properly assessed. The board of equalization must examine and act upon all complaints filed with the board in regard to the assessed value of any property entered on the property rolls and must correct any assessment improperly made. The taxpayer shall have the burden of proof in seeking affirmative relief to establish that the determination of the assessor is erroneous, including any determination of assessed value. A preponderance of the evidence shall suffice to sustain the burden of proof. [I.C., § 63-502, as added by 1996, ch. 98, § 6, p. 308; am. 2003, ch. 266, § 2, p. 703.] *

STATUTORY NOTES

Cross References. — Cancellation and refund of unlawful taxes, § 63-1302. age and drought relief matters, §§ 31-901 — 31-906.

Cancellation or adjustment of taxes when county commissioners cooperate with federal department or agency in reclamation, drainage and drought relief matters, §§ 31-901 — 31-906. **Effective Dates.** — Section 5 of S.L. 2003, ch. 266 declared an emergency. Approved April 8, 2003.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Application.
- Constitutionality.
- Method of valuation.
- Powers of board.
- Review.
- Statutory remedy exclusive.

Application.

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Constitutionality.

The board of county commissioners sitting as a board of equalization and the district court on appeal from their action are not, by statute, assessing the property, but are equalizing the assessment; therefore the statute providing for appeals is constitutional. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Method of Valuation.

County commissioners have no authority to substitute for the statutory method of valuing property a method of their own. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Powers of Board.

Powers of assessor and county board of equalization in matter of assessments and equalization of assessments cannot be usurped, court's function on appeal being limited to review, and affirmation, reversal or modification thereof. *Winton Lumber Co. v. Kootenai County*, 53 Idaho 539, 26 P.2d 124 (1933).

Review.

The county board of equalization at its December meeting has not been empowered by the legislature to hear complaints as regards assessments of real property, consequently such board was not empowered to equalize assessments of real property or hear complaints in regard thereto except at the board's June and July meetings as provided by statute, and since such board at its December meeting could only be concerned with

equalization of assessments upon personal property, therefore the owners of an interest in real property assessed at the December meeting were not afforded an opportunity to register their complaints that the property was improperly included upon the personal property roll. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Statutory Remedy Exclusive.

The statutory remedy afforded to an aggrieved taxpayer is exclusive, and a taxpayer may not maintain an action against a county for a general money judgment for the amount of taxes erroneously exacted, where the tax is not absolutely void. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where a tax is not void *ab initio* and the legislature has empowered administrative board to determine questions with right of appeal to the courts from board's decision, such remedy is exclusive. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

A taxpayer who did not complain before the board of equalization of the county with reference to the 1936 assessment and who did not appeal from an adverse decision of the board to the taxpayer's complaint as to 1940 assessment could not maintain an action in court for the recovery of taxes paid under protest. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where taxpayer alleged excessive assessments on his personal property arising from the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administrative process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

63-503. New and additional assessments. — (1) The board of equalization, during its sessions, must direct and require the assessor to assess any property required by this title to be entered upon the property rolls, which is known to have escaped assessment, and in case any assessment of property made by the assessor is deemed by the board of equalization to be so incomplete or inaccurate as to render doubtful the collection of the taxes thereon, the said board must direct the assessor to make a new assessment of such property, in which case the defective assessment shall be cancelled.

(2) All changes in assessments and all new assessments ordered by the board of equalization shall be entered on the property rolls, under the direction of the clerk of the board, and any assessment so changed or entered has the same force and effect as if made and entered by the assessor before the completion of the property rolls.

(3) The county commissioners meeting as a board of equalization shall make no reduction in the assessment of any property when, according to the notation made by the assessor upon the roll, the owner, or his agent or representative, has refused to make the sworn taxpayer's declaration required of him or has willfully concealed, removed, transferred, misrepresented or failed to list such property for the purpose of evading taxation, unless it is shown to the satisfaction of the board that such notation by the assessor is erroneous or false. [I.C., § 63-503, as added by 1996, ch. 98, § 6, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

County assessor's duty.
Duty of board.
Notice.
Powers of board.

County Assessor's Duty.

A county assessor should make such changes upon the assessment roll of his county as the board of equalization for his county has ordered relative to the assessment of an individual taxpayer. *Murphy v. Board of Comm'rs*, 6 Idaho 745, 59 P. 715 (1899).

Duty of Board.

It is the duty of the board of equalization to order the assessor to assess any property which has escaped assessment, and where such assessment is made before the final adjournment of the session of the board convened, the taxpayer has his opportunity of being heard and such assessment is not void for want of notice or opportunity to be heard thereon. *Inland Lumber & Timber Co. v. Thompson*, 11 Idaho 508, 83 P. 933 (1905).

It was the duty of the county board of equalization to determine whether assessments had been made on full cash value and on equal bases throughout the county, and where property had been under or over assessed as compared with other assessments, and its assessment was above or below full cash value, the board was required to bring it

in line with other property. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Notice.

Where the board of equalization has made an order proposing a raise on the valuation of any specific property, and the person against whom such property is assessed thereafter appears at the time and place fixed for the hearing on such proposed change and protests against the same and submits his evidence, he thereby waives the service of notice and cannot be heard to object to the action because notice was not served. *First Nat'l Bank v. Washington County*, 17 Idaho 306, 105 P. 1053 (1909).

Powers of Board.

S.L. 1891 did not authorize the state board of equalization to raise or diminish the valuation put upon any class or classes of property, nor to fix the valuation of any class of property, but it could raise or diminish the aggregate valuation of the property of any county by such percentage as justice required. *Orr v. State Bd. of Equalization*, 3 Idaho 190, 28 P. 416 (1891).

63-504. Lien of unpaid personal property taxes on real property.

— Taxes upon personal property, where the owners of such personal property are owners of real property in the county, which have not been paid on or before the second Monday of October, and which the board of county commissioners finds to be a lien upon the real property, may be certified to the county auditor and the tax collector. Such taxes, together with all costs, late charges and interest must be entered by the county tax collector upon the property roll against the real property subject to such lien. The tax collector shall immediately notify the property owner of any such taxes

which have been added. Such action shall result in cancellation of the taxes and late charges on the personal property roll for the personal property subject to the delinquency. [I.C., § 63-504, as added by 1996, ch. 98, § 6, p. 308; am. 1998, ch. 2, § 1, p. 99.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.

Duty of assessor.

Application.

This section is applicable to tax on migratory livestock. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498, 65 A.L.R. 663 (1928).

Duty of Assessor.

If any tax due on personal property is not paid on demand or payment secured, the

assessor (now tax collector) must distrain and sell so much of said property as might be necessary to pay the taxes or forthwith bring suit with attachment for such taxes or the estimated amount thereof. *Lemhi County ex rel. Gilbreath v. Boise Livestock Loan Co.*, 47 Idaho 712, 278 P. 214 (1929).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 831-833.

C.J.S. — 84 C.J.S., Taxation, §§ 489-606.

63-505. Production of evidence by county officials and others. — The board of equalization may require the attendance of any county officer or deputy, who must furnish the board with any information which may be had from the records in his office and which the board may deem necessary in equalizing the assessments, and may also subpoena witnesses and hear evidence in all matters relating to the assessment of property, and may arbitrarily assess the property of any person refusing to appear or testify, and any assessment so made shall be conclusive on all questions of assessment in any court or proceeding. [I.C., § 63-505, as added by 1996, ch. 98, § 6, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Statutory Remedy Exclusive.

A taxpayer who did not complain before the board of equalization of the county with reference to the 1936 assessment and who did not appeal from an adverse decision of the board to the taxpayer's complaint as to 1940 assessment could not maintain an action in court for the recovery of taxes paid under protest. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

The statutory remedy afforded to an ag-

grieved taxpayer is exclusive, and a taxpayer may not maintain an action against a county for a general money judgment for the amount of taxes erroneously exacted, where the tax is not absolutely void. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where a tax is not void ab initio and the legislature has empowered administrative board to determine questions with right of appeal to the courts from the board's decision,

such remedy is exclusive. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

63-506. Notice to taxpayer of new assessments and changes. — The board of equalization must, before taking final action in equalizing the assessed value of the property of any person refusing to appear and testify, or in increasing the assessed value of any property, notify the owner thereof, or his agent or representative, of its intention to do so, and require such person to appear forthwith before the board and make objection, if he has any. The board may direct the notice to be served personally upon the owner, or his agent or representative; or, it may direct the clerk to serve the notice by mail, addressed to such owner, or his agent or representative, at his last known post office address. In the case of service by mail, the board of equalization shall not take final action until ten (10) working days after the mailing of such notice, unless the owner, or his agent, or representative, shall sooner appear. If the owner is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the owner shall, within ten (10) days, deliver to the equitable titleholder a true copy of the notice from the board of equalization. [I.C., § 63-506, as added by 1996, ch. 98, § 6, p. 308; am. 2007, ch. 15, § 1, p. 27.]

STATUTORY NOTES

Cross References. — Notice by mail, § 60-109A.
Record of proceedings, § 63-507.

Amendments. — The 2007 amendment, by ch. 15, substituted “ten (10) working days” for “five (5) days” in the third sentence.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.
Increase on appeal.
Time of raising valuation.

Constitutionality.

Statutes authorizing appeal to district court from decision of county board of equalization in proceeding to review assessment and authorizing district court to “modify” board’s determination is not unconstitutional as authorizing judiciary to exercise executive powers. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Increase on Appeal.

Statute authorizing district court, on appeal from board of equalization, to affirm, reverse, or “modify” authorizes court to in-

crease assessments, although statutory notice has not been given; “modify” in taxation appeal includes the element of increasing. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Time of Raising Valuation.

County board of equalization had authority to meet and raise valuations after the third Monday in July, its final order making such increases having been entered on the fourth Monday in July. *Overland Co. v. Utter*, 44 Idaho 385, 257 P. 480 (1927).

63-507. Record of proceedings. — The clerk of the board must record in the official minutes all proceedings of the county commissioners relating to the equalization of assessments, the allowance of exemptions, and all

changes, corrections and orders made by the board of equalization, and the names of all persons who have appeared before the board of equalization and who have been heard upon matters affecting the assessment of property. [I.C., § 63-507, as added by 1996, ch. 98, § 6, p. 308.]

63-508. Completion of property roll after equalization. — As soon as the county auditor receives the certified statements prescribed in section 63-111, Idaho Code, he shall cause to be entered all changes and corrections made by the state tax commission in the assessments upon the property tax roll. The county auditor shall enter upon the operating property roll all assessments of operating property under the jurisdiction of the state tax commission in his county, and made by the state tax commission in adjusting the valuations among the taxing districts in accordance with the certified statement of the chairman of the state tax commission. The auditor shall enter the total equalized values and show the amount, and reasons for any exemptions which have been allowed by the county commissioners, and shall thereafter enter the total equalized values for taxation on the property rolls. The auditor shall then add up the total equalized values, amounts of exemption and total equalized values for taxation, and enter the total in the property rolls. [I.C., § 63-508, as added by 1996, ch. 98, § 6, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Ministerial Duty.

A statute, which requires that as soon as the county auditor receives certified statements from the state tax commission he shall enter in the columns in which the items to be corrected appear upon the real property assessment roll, all changes and corrections

made by the state tax commission in the assessment, imposes a “purely ministerial” duty upon the county auditor, and if he refuses to carry out that duty a writ of mandamus will lie to compel his performance of that ministerial duty. *Idaho State Tax Comm’n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

63-509. Delivery of rolls to county auditor — Abstracts of rolls. — (1) On or before the second Monday of July the board of equalization must deliver the property rolls, with all changes, corrections and additions and exemptions from taxation entered therein, to the county auditor. It shall be the duty of the county auditor to cause to be prepared the roll for delivery to the county tax collector on or before the first Monday of November. It shall be the duty of the county auditor to cause to be prepared a total of the amount and value of each category of property and prepare an abstract of all the property entered upon the roll in the manner and form required by the state tax commission. Such forms must show, but need not be limited to, the market value for assessment purposes of all property by categories, and the exemptions from taxation allowed by categories. Any abstracts needed by and prepared for the state tax commission must be delivered by certified mail to the state tax commission by the fourth Monday of July. The value of exemptions will be shown and identified for exemptions granted pursuant to chapters 20 and 29, title 50, Idaho Code, for the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, and sections 63-602G, 63-602K, 63-602P, 63-

602AA, 63-602X, 63-602BB and 63-602CC, Idaho Code, as well as the net taxable value for each of the categories. The abstracts shall be prepared and duly verified and must show a correct classification of all the property in accordance with the classification of such property upon the property roll, and all matters and things required to be shown upon the abstracts must be entered.

(2) The subsequent property roll shall be delivered to the county auditor as soon as possible after the first Monday in December. The county auditor shall deliver the subsequent property roll to the county tax collector without delay.

(3) The missed property roll shall be delivered to the county auditor as soon as possible, but no later than the first Monday in March of the succeeding year. The county auditor shall deliver the missed property roll to the county tax collector without delay.

(4) The county auditor must cause to be prepared abstracts of the combined subsequent and missed property rolls as prescribed in subsection (1) and submit the abstracts by certified mail to the state tax commission on or before the first Monday in March of the succeeding year. [I.C., § 63-509, as added by 1996, ch. 98, § 6, p. 308; am. 1997, ch. 117, § 19, p. 298.]

STATUTORY NOTES

Cross References. — Garnishee, collecting officers not liable in official capacity as, § 8-521.

1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Effective Dates. — Section 42 of S.L.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Statutory remedy exclusive.
Time of raising valuation.

Statutory Remedy Exclusive.

When respondent's predecessor in interest failed to appear before the board of equalization while it was in session in 1952 to protest the assessment of taxes, he waived or forfeited his right to thereafter challenge the assessment or the taxes levied thereon on the ground that the assessment was unequal and excessive; likewise with respect to the assessments made and the taxes levied for the years 1953 and 1954. Administrative remedies provided by the legislature for unequal assessment of property must be pursued by the taxpayer as a condition precedent to judicial action. In re Felton's Petition, 79 Idaho 325, 316 P.2d 1064 (1957).

Where the district court received and acted

upon evidence as to the value of the property for assessment purposes during the years 1952, 1953 and 1954 and found that the assessments were unequal and excessive, and ordered them reduced and the taxes abated, the court engaged in a process of equalization which it had no jurisdiction to do on an appeal from the board of county commissioners. In re Felton's Petition, 79 Idaho 325, 316 P.2d 1064 (1957).

Time of Raising Valuation.

County board of equalization had authority to meet and raise valuations after the third Monday in July, its final order making such increases having been entered on the fourth Monday in July. Overland Co. v. Utter, 44 Idaho 385, 257 P. 480 (1927).

63-510. Notification of valuation due to state tax commission. —

(1) Prior to the first Monday of August the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the property roll for the current year and shall provide an estimate of the net taxable value for each taxing unit or district from the current year's estimated subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year to any taxing unit or district.

(2) Prior to the first Monday of March the auditor of each county in the state shall notify the state tax commission of the net taxable value of all property situated within each taxing unit or district in the county from the subsequent and missed property rolls. Such notification shall also include an estimate of the net taxable value within any area annexed during the immediate prior year, and listed on the subsequent or missed property roll, to any taxing unit or district.

(3) The notification required in subsections (1) and (2) of this section shall be on forms prescribed and provided by the state tax commission and shall list separately the value exempt from property taxation in accordance with section 63-602G, Idaho Code, and the value in excess of the equalized assessment valuation as shown on the base assessment roll in any revenue allocation area, pursuant to chapters 20 and 29, title 50, Idaho Code.

(4) For the purposes of this section, "taxing district," as defined in section 63-201(22) [(23)], Idaho Code, shall include each incorporated city in each county, regardless of whether said city certifies a property tax budget. [I.C., § 63-510, as added by 1996, ch. 98, § 6, p. 308.]

STATUTORY NOTES

Cross References. — Property and special taxes against counties, § 63-110.

Compiler's Notes. — Following the amendment of § 63-201 by S.L. 1997, ch. 286,

§ 1, the reference, in subsection (4) of this section, to subsection (22) of § 63-201 should be to subsection (23).

63-511. Appeals from county board of equalization. — (1) Any time within thirty (30) days after mailing of notice of a decision of the board of equalization, or pronouncement of a decision announced at a hearing, an appeal of any act, order or proceeding of the board of equalization, or the failure of the board of equalization to act may be taken to the board of tax appeals. Such appeal may only be filed by the property owner, the assessor, the state tax commission or by a person aggrieved when he deems such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

(2) Notice of such appeal stating the grounds therefor shall be filed with the county auditor, who shall forthwith transmit to the board of tax appeals a copy of said notice, together with a certified copy of the minutes of the proceedings of the board of equalization resulting in such act, order or proceeding, or a certificate to be furnished by the clerk of the board that said

board of equalization has failed to act in the time required by law on any complaint, protest, objection, application or petition in regard to assessment of the complainant's property, or a petition of the state tax commission. The county auditor shall also forthwith transmit all evidence taken in connection with the matter appealed. The county auditor shall submit all such appeals to the board of tax appeals within thirty (30) days of being notified of the appeal or by no later than October 1, whichever is later. The board of tax appeals may receive further evidence and will hear the appeal as provided in chapter 38, title 63, Idaho Code.

(3) Any appeal that may be taken to the board of tax appeals may, during the same time period, be taken to the district court for the county in which the property is located.

(4) In any appeal taken to the board of tax appeals or the district court pursuant to this section, the burden of proof shall fall upon the party seeking affirmative relief to establish that the valuation from which the appeal is taken is erroneous, or that the board of equalization erred in its decision regarding a claim that certain property is exempt from taxation, the value thereof, or any other relief sought before the board of equalization. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The board of tax appeals or the district court shall render its decision in writing, including therein a concise statement of the facts found by the court and the conclusions of law reached by the court. The board of tax appeals or the court may affirm, reverse, modify or remand any order of the board of equalization, and shall grant other relief, invoke such other remedies, and issue such orders in accordance with its decision, as appropriate. [I.C., § 63-511, as added by 1996, ch. 98, § 6, p. 308; am. 1999, ch. 107, § 1, p. 334; am. 2003, ch. 266, § 3, p. 703.]

STATUTORY NOTES

Cross References. — County commissioners meeting as board of equalization, §§ 63-501.

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the

commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

Section 5 of S.L. 2003, ch. 266 declared an emergency. Approved April 8, 2003.

JUDICIAL DECISIONS

Exhaustion of Administrative Remedies.

District court lacked subject matter jurisdiction over the landowners' claims due to their failure to exhaust administrative remedies; the landowners' claims that the county assessor improperly assessed properties by neighborhood and utilized other improper

procedures were challenges within the administrative framework. *Park v. Banbury*, — Idaho —, 149 P.3d 851 (2006).

Cited in: *Mitchell v. Bd. of Equalization*, 138 Idaho 52, 57 P.3d 763 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Clerical error.
 Constitutionality.
 Effect of subsequent legislation.
 Exhaustion of administrative remedies.
 Injunction.
 Power of district court.
 Statutory remedy exclusive.
 Taxes equalized on appeal.

Clerical Error.

The board of tax appeals has authority to direct a county board of equalization to correct an apparent error in one of its orders. *Woodward v. Board of Equalization*, 114 Idaho 882, 761 P.2d 1234 (Ct. App. 1988).

Constitutionality.

Provision in this section providing for an appeal from county equalization board to state tax board does not violate constitution, since Const., Art. 7, § 12 provides that state tax commission "shall have such other powers and perform such other duties as may be prescribed by law." *Utah Oil Refining Co. v. Hendrix*, 72 Idaho 407, 242 P.2d 124 (1952).

Effect of Subsequent Legislation.

Effect of subsequent legislation on rights acquired under prior tax laws is discussed in *Lawrence v. Defenbach*, 23 Idaho 78, 128 P. 81 (1912); *Peavey v. McCombs*, 26 Idaho 143, 140 P. 965 (1914); *Rice v. Rock*, 26 Idaho 552, 144 P. 786 (1914); *Grandview Irrigation Dist. v. Brown*, 32 Idaho 187, 179 P. 952 (1919); *Eaton v. McCarty*, 34 Idaho 747, 202 P. 603 (1921); *Hand v. Twin Falls County*, 40 Idaho 638, 236 P. 536 (1925).

Exhaustion of Administrative Remedies.

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review, however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case the district court does not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

Injunction.

Suit by title company to enjoin collection of ad valorem tax on the ground that it was exempt from ad valorem tax by virtue of payment of premium tax was proper, since it

was not a proceeding for equalization of a valid tax levied but a proceeding challenging a void tax against which equity can grant relief by means of an injunction. *Security Abstract & Title Co. v. Leonardson*, 74 Idaho 528, 264 P.2d 1027 (1953).

Power of District Court.

District court may affirm, reverse, or modify order appealed from. *First Nat'l Bank v. Board of County Comm'rs*, 40 Idaho 391, 232 P. 905 (1925).

If the action taken was by the county board of equalization, as the minutes recite, then the district court would not acquire jurisdiction on appeal, since the statute provides that appeals from the county board of equalization are to be taken to the state tax commission. In *re Felton's Petition*, 79 Idaho 325, 316 P.2d 1064 (1957).

Statutory Remedy Exclusive.

A taxpayer who did not complain before the board of equalization of the county with reference to the 1936 assessment and who did not appeal from an adverse decision of the board to the taxpayer's complaint as to 1940 assessment could not maintain an action in court for the recovery of taxes paid under protest. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where a tax is not void ab initio and the legislature has empowered administrative board to determine questions with right of appeal to the courts from the board's decision, such remedy is exclusive. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

The statutory remedy afforded to an aggrieved taxpayer is exclusive, and a taxpayer may not maintain an action against a county for a general money judgment for the amount of taxes erroneously exacted, where the tax is not absolutely void. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where taxpayer alleged excessive assessments on his personal property arising from the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administra-

tion process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

Taxes Equalized on Appeal.

The board of county commissioners sitting as a board of equalization and the district

court on appeal from their action are not considered as assessing the property, but only as equalizing the assessment. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 831-833.

C.J.S. — 84 C.J.S., Taxation, § 566.

63-512 — 63-513c. [Reserved.]

63-513d. Filing and payment extensions as disaster relief. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section was enacted by S.L. 1996, ch. 368, § 1 and was repealed by § 3 of S.L. 1996, ch. 368, effective July 1, 1996.

Effective Dates. — Section 4 of S.L. 1996, ch. 368 declared an emergency and provided that §§ 1 and 2 should be in full force and effect on and after passage and approval but

that "the authority granted herein to extend time shall terminate and be null and void and of no force and effect on and after July 1, 1996, but any extension granted within such period shall remain effective until it expires. Section 3 of this act shall be in full force and effect on and after July 1, 1996." Approved March 20, 1996.

63-514 — 63-516. [Reserved.]

63-517. Filing of electronic returns and documents — Electronic funds transfers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-517, as added by 1996,

ch. 58, § 1, p. 169, was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

CHAPTER 6

EXEMPTIONS FROM TAXATION

SECTION.

63-601. All property subject to taxation.

63-602. Property exempt from taxation.

63-602A. Property exempt from taxation — Government property.

63-602B. Property exempt from taxation — Religious corporations or societies.

63-602C. Property exempt from taxation — Fraternal, benevolent, or charitable corporations or societies.

SECTION.

63-602D. Property exempt from taxation — Certain hospitals.

63-602E. Property exempt from taxation — Property used for school or educational purposes.

63-602F. Property exempt from taxation.

63-602G. Property exempt from taxation — Homestead.

63-602H. Value of residential property in certain zoned areas.

63-602I. Property exempt from taxation —

SECTION.

- Household goods, wearing apparel and other personal effects in certain cases.
- 63-602J. Property exempt from taxation — Motor vehicles and vessels properly registered.
- 63-602K. Property exempt from taxation — Speculative portion of value of agricultural land.
- 63-602L. Property exempt from taxation — Intangible personal property.
- 63-602M. Property exempt from taxation — Certain secured dues and credits.
- 63-602N. Property exempt from taxation — Irrigation water and structures — Operating property of irrigation districts or canal companies.
- 63-602O. Property exempt from taxation — Property used for generating and delivering electrical power for irrigation or drainage purposes and property used for transmitting and delivering natural gas energy for irrigation or drainage purposes.
- 63-602P. Property exempt from taxation — Facilities for water or air pollution control.
- 63-602Q. Property exempt from taxation — Certain cooperative telephone lines.
- 63-602R. Property exempt from taxation — Agricultural crops.
- 63-602S. Property exempt from taxation — Fruits and vegetables held for human consumption, and seeds, shipped out of the state.
- 63-602T. Property exempt from taxation — Personal property manufactured or processed in this state and actually sold and shipped out of state.
- 63-602U. Property exempt from taxation — Personal property shipped into the state and stored in a public or private warehouse structure, and designated for shipment out of the state to be considered in transit.
- 63-602V. Property exempt from taxation — Personal property shipped into the state and stored in the original package.

SECTION.

- 63-602W. Business inventory exempt from taxation — Business inventory that is a component of real property that is a single family dwelling.
- 63-602X. Property exempt from taxation — Casualty loss.
- 63-602Y. Property exempt from taxation — Effect of change of status.
- 63-602Z. Exemption from occupancy tax.
- 63-602AA. Property exempt from taxation — Exceptional situations.
- 63-602BB. Partial exemption for remediated land.
- 63-602CC. Property exempt from taxation — Qualified equipment utilizing postconsumer waste or postindustrial waste.
- 63-602DD. Manufactured homes used under a dealer's plate or as a sheep and cow camp.
- 63-602EE. Property exempt from taxation — Certain tangible personal property.
- 63-602FF. [Repealed.]
- 63-602GG. Property exempt from taxation — Low-income housing owned by nonprofit organizations.
- 63-602HH. Property exempt from taxation — Significant capital investments.
- 63-602II. Property exempt from taxation — Unused infrastructure.
- 63-602JJ. Property exempt from taxation — Certain operating property of producer of electricity by means of wind energy.
- 63-603. Electric, or gas, public utilities pumping water for irrigation or drainage — Reduction of assessment in accordance with exemption — Credit on customers' bills or payment to consumers.
- 63-604. Land actively devoted to agriculture defined.
- 63-605. Land used to protect wildlife and wildlife habitat.
- 63-606. [Repealed.]
- 63-606A. Small employer growth incentive exemption.
- 63-607. [Repealed.]
- 63-608. [Reserved.]
- 63-609, 63-610. [Repealed.]
- 63-611 — 63-626. [Reserved.]
- 63-627, 63-628. [Repealed.]

63-601. All property subject to taxation. — All property within the jurisdiction of this state, not expressly exempted, is subject to assessment and taxation. [I.C., § 63-601, as added by 1996, ch. 98, § 7, p. 308.]

63-602. Property exempt from taxation. — (1) Property shall be exempt from taxation as provided in this chapter; provided, that no deduction shall be made in assessment of shares of capital stock of any corporation or association for exemptions claimed under this section, and provided further, that the term “full cash value” wherever used in this act shall mean the actual assessed value of the property as to which an exemption is claimed.

(2) The use of the words “exclusive” or “exclusively” in this chapter shall mean used exclusively for any one (1) or more, or any combination of, the exempt purposes provided hereunder and property used for more than one (1) exempt purpose, pursuant to the provisions of sections 63-602A through 63-602Z [63-602JJ], Idaho Code, shall be exempt from taxation hereunder so long as the property is used exclusively for one (1) or more or any combination of the exempt purposes provided hereunder.

(3) All exemptions from property taxation claimed under this chapter shall be approved annually by the county board of equalization. [I.C., § 63-602, as added by 1996, ch. 98, § 7, p. 308.]

STATUTORY NOTES

Cross References. — Charitable trusts and private foundations exemption, §§ 68-1201 — 68-1207.

Corporate credit union, exemptions, § 26-2186.

Health facilities authority, exemption, § 39-1452.

Junior college dormitory housings, exemption, § 33-2133.

Legislature may provide exemptions, Const., Art. 7, § 5.

State housing agency, exemptions, § 67-6208.

Compiler's Notes. — The bracketed reference in subsection (2) was added by the compiler.

JUDICIAL DECISIONS

Claim of Exemption.

Although community action agency (CAA) was a non-profit corporation created to provide low-income housing, CAA received \$760,575 in private contributions in 1998, and \$3,563,810 from government grants in 1999, and although it was a borderline call,

the board of equalization properly revoked CAA's property tax exemption; the fact that the tenants did not pay full market price for the assistance was not enough, by itself, for CAA to be considered a charity. Cmty. Action Agency, Inc. v. Bd. of Equalization, 138 Idaho 82, 57 P.3d 793 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Chattels real.

Claim of exemption.

Classification.

Construction.

Power to exempt.

Purpose of exemptions.

Recovery of tax on exempt property.

Special assessments for local improvements.

Uniform taxation.

Use as criterion for exemption.

Chattels Real.

Under former statute, defining personality for tax purposes as "equities in state lands, easements, and reservations," mineral reservations were assessable as personality and not as realty. *In re Winton Lumber Co.*, 57 Idaho 131, 63 P.2d 664 (1936).

Claim of Exemption.

When claim of exemption from taxation is made, person claiming it must be able to point out some provision of law plainly giving exemption. *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914).

Classification.

Classification for purposes of tax exemption must not be arbitrary. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Construction.

Language of exemption statutes must be given its ordinary meaning. *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1928).

An alleged grant of exemption will be strictly construed and thus must be in terms so specific and certain as to leave no room for doubt, for an exemption cannot be sustained unless it is shown to be within the spirit as well as the letter of the law. *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1928).

While exemptions are to be strictly construed, statute must be clearly prohibited by constitution before it can be declared in violation thereof. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Statutes purporting to grant exemptions from general taxation should generally be strictly construed as exemptions are never presumed. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

Power to Exempt.

Power of state to exempt from taxation is plenary save only as it may be limited by

federal or state constitution. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Purpose of Exemptions.

The purpose of exemptions of privately owned property from taxation undoubtedly is to promote the public welfare and the right of the legislature to exempt privately owned property is recognized if it is exercised to encourage private enterprise and thereby further the public welfare. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

Recovery of Tax on Exempt Property.

Taxes paid under protest may be recovered where assessment was illegally made on exempt property. *Idaho Irrigation Co. v. Lincoln County*, 28 Idaho 98, 152 P. 1058 (1915).

Where tax on exempt property is paid voluntarily under mistake of law, taxpayer may not recover same. *Asp v. Canyon County*, 43 Idaho 560, 256 P. 92 (1927).

Special Assessments for Local Improvements.

Constitutional or statutory exemption from taxation applies only to taxation for general purposes of government and does not relieve from liability for local assessments for municipal and other like improvements. *In re Drainage Dist. No. 1*, 29 Idaho 377, 161 P. 315 (1916).

Uniform Taxation.

The term "property" within the constitutional provision requires all "property" to be taxed uniformly by value. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Use as Criterion for Exemption.

Where use is the criterion, exemption is lost if property is appropriated to other uses. *Bistline v. Bassett*, 47 Idaho 66, 272 P. 696 (1928).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 307-391.

C.J.S. — 84 C.J.S., Taxation, § 215.

A.L.R. — Prospective use for tax exempt purposes as entitling property to tax exemption. 54 A.L.R.3d 9.

Exemption of property leased by and used for purposes of otherwise tax exempt body. 55 A.L.R.3d 430.

63-602A. Property exempt from taxation — Government property. — (1) The following property is exempt from taxation: property belonging to the United States, except when taxation thereof is authorized by the congress of the United States, this state, or to any county or municipal corporation or school district within this state.

(2) However, inventory property acquired under agricultural credit programs of the consolidated farm service agency of the United States depart-

ment of agriculture shall be subject to taxation as other property in the county.

(3) However, unimproved real property of more than ten (10) contiguous acres owned in fee simple by the department of fish and game shall be subject to a fee in lieu of property taxes contingent upon the following conditions and requirements:

(a) The fee in lieu of property taxes shall not exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the property tax rate for the property shall have been increased.

(b) The department shall determine and identify the parcels of property and their current use as qualified under the provisions of this act. The department shall consult with the appropriate county treasurer and determine the fee to be paid on the property and credited continuously to the county current expense fund. The fee shall be an amount equal to the property tax the property would generate if assessed as agricultural property.

(c) Any future increase in the fee paid in lieu of property taxes shall be determined by the amount of property taxes the property would generate if assessed as agricultural property. The increase may be determined by the department working cooperatively with the appropriate county assessor. The method used for determining the fee that would be due on department property is to be used only under this subsection and has no other application in any other section of the Idaho Code.

(d) The department shall then provide to the assessor of the county where the parcels are located on or before the second Monday of March each year, a listing identifying each parcel of unimproved property by legal description, size and amount of the fee for the preceding calendar year. The treasurer shall prepare and submit a billing for payment based on this information to the department. Once the fee has been determined, payment shall be made by June 20 of that year from moneys appropriated for that purpose. However, if the fees exceed the moneys appropriated for that purpose, the director of the department of fish and game shall calculate the percent reduction that must be made and certify the proportionate reduction to each county treasurer.

(e) For the purpose of this section only, unimproved real property shall mean property on which no homesite or improved site is located, and homesite or improved site shall mean any buildings, structures, or fixtures which have been erected or affixed to the land and the necessary acreage required to utilize the homesite or improved site as determined by the county assessor shall be exempt. For purposes of this subsection only, roads or fences shall not be considered as improvements. [I.C., § 63-602A, as added by 1996, ch. 98, § 7, p. 308; am. 2003, ch. 8, § 2, p. 14.]

63-602B. Property exempt from taxation — Religious corporations or societies. — (1) The following property is exempt from taxation: property belonging to any religious corporation or society of this state, used exclusively for and in connection with any combination of religious, educational, or recreational purposes or activities of such religious corporation or

society, including any and all residences used for or in furtherance of such purposes.

(2) If the entirety of any property belonging to any such religious corporation or society is leased by such owner, or if such religious corporation or society uses the entirety of such property for business or commercial purposes from which a revenue is derived, then the same shall be assessed and taxed as any other property. If any such property is leased in part or used in part by such religious corporation or society for such business or commercial purposes, the assessor shall determine the value of the entire exempt property, and the value of the part used or leased for such business or commercial purposes, and that part used or leased for such business or commercial purposes shall be taxed as any other property. The Idaho state tax commission shall promulgate rules establishing a method of determining the value of the part used or leased for such business or commercial purposes. If the value of the part used or leased for such business or commercial purposes is determined to be three percent (3%) or less of the value of the entirety, the whole of said property shall remain exempt. If the value of the part used or leased for such business or commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such property, and shall assess the trade fixtures used in connection with the sale of all merchandise for such business or commercial purposes, provided however, that the use or lease of any property by any such religious corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums, or club rooms for and in connection with the purposes for which such religious corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom. [I.C., § 63-602B, as added by 1996, ch. 98, § 7, p. 308; am. 2007, ch. 38, § 1, p. 95.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 38, in subsection (1), substituted “in connection with any combination of religious, educational, or recreational purposes or activities of such religious corporation or society, including any and all residences used for or in furtherance of such purposes” for “in connection with public worship, and any parsonage belonging to such corporation or society and occupied as such, and any recreational hall

belonging to and used in connection with the activities of such corporation or society; and this exemption shall extend to property owned by any religious corporation or society which is used for any combination of religious worship, educational purposes and recreational activities, not designed for profit”; and added the subsection (1) designation and subsection (2).

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.
Construction.
Multiple use property.
Parsonage.

Constitutionality.

This section's "parsonage" exemption does not violate the Establishment Clause as it does not differentiate among religious sects and the provision is neutral both in design and purpose. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993).

Construction.

This section must be construed strictly. *Upper Columbia Mission Soc'y v. Kootenai County*, 93 Idaho 880, 477 P.2d 503 (1970), overruled on other grounds, *North Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai County*, 94 Idaho 644, 496 P.2d 105 (1972).

Multiple Use Property.

Mission president's home did not qualify for the "mixed use" ad valorem tax exemption under this section because it was used for a combination residence and place of religious worship, or education, or recreation. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993).

Parsonage.

Mission president's home did not qualify for exemption as a "parsonage belonging to any religious corporation or society and occupied as such" within the strict parameters of this section where the mission president had no affiliated meetinghouse and no local congregation, where the mission president did not serve the function of a minister or parson, where the mission president never met with all the missionaries at one time in one place, and where the missionaries attended sabbath services and other services at the church in the area where they were staying. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993).

Residences owned by the Roman Catholic Diocese did not qualify for exemption as a "parsonage belonging to any religious corporation or society and occupied as such" within the parameters of this section where a single-family residence was occupied by a semi-retired priest without a designated congregation and where the residents of a duplex property served chiefly as administrators, lacking a regular ministry. *Ada County Assessor v. Roman Catholic Diocese*, 123 Idaho 425, 849 P.2d 98 (1993).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, *State and Local Taxation*, §§ 362-391.

A.L.R. — *Religious organization's exemption from sales or use tax*. 54 A.L.R.3d 1204.

Exemption of parsonage or residence of minister, priest, rabbi, or other church personnel. 55 A.L.R.3d 356.

63-602C. Property exempt from taxation — Fraternal, benevolent, or charitable corporations or societies. — The following property is exempt from taxation: property belonging to any fraternal, benevolent, or charitable corporation or society, the World War veteran organization buildings and memorials of this state, used exclusively for the purposes for which such corporation or society is organized; provided, that if any building or property belonging to any such corporation or society is leased by such owner or if such corporation or society uses such property for business purposes from which a revenue is derived which, in the case of a charitable organization, is not directly related to the charitable purposes for which such charitable organization exists, then the same shall be assessed and taxed as any other property, and if any such property is leased in part or used in part by such corporation or society for such purposes the assessor shall determine the value of the entire building and the value of the part used or leased for commercial purposes. If the value of the part used for commercial purposes is determined to be three percent (3%) or less than the value of the entirety, the whole of said property shall remain exempt. If the value of the part used for commercial purposes is determined to be more than three percent (3%) of the value of the entirety, the assessor shall assess such proportionate part of such building including the value of the real

estate as is so leased or used for such purposes, and shall assess the trade fixtures used in connection with the sale of all merchandise; provided however, that the lease or use of any property by any such corporation or society for athletic or recreational facilities, residence halls or dormitories, meeting rooms or halls, auditoriums or club rooms within the purposes for which such corporation or society is organized, shall not be deemed a business or commercial purpose, even though fees or charges be imposed and revenue derived therefrom. [I.C., § 63-602C, as added by 1996, ch. 98, § 7, p. 308; am. 2003, ch. 8, § 3, p. 14.]

STATUTORY NOTES

Cross References. — Fraternal benefit societies, tax exemption, § 41-3223.

JUDICIAL DECISIONS

ANALYSIS

Apportionment.
Determination of charitable status.
Use of property.

Apportionment.

Taxpayer was not entitled to an apportionment of its property taxes because it was unable to show that it leased less than three percent of its building and equipment to another entity; the evidence showed that the two companies were each entitled to use 50 percent of the property. *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003).

Determination of Charitable Status.

Although community action agency (CAA) was a non-profit corporation created to provide low-income housing, CAA received \$760,575 in private contributions in 1998, and \$3,563,810 from government grants in 1999, and although it was a borderline call, the board of equalization properly revoked CAA's property tax exemption; the fact that the tenants did not pay full market price for the assistance was not enough, by itself, for CAA to be considered a charity. *Cnty. Action*

Agency, Inc. v. Bd. of Equalization, 138 Idaho 82, 57 P.3d 793 (2002).

District court's finding that a taxpayer was a charitable organization was not supported by substantial evidence because the taxpayer received rent payments from an entity that shared its office building and equipment; there was no evidence that the payments were made with a donative intent. *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003).

Use of Property.

District court properly denied a taxpayer's claim for an exemption for its property where the evidence showed that the land and buildings were not being used for a charitable purpose; the land was used by a farmer, and the taxpayer shared its office space and equipment with another entity, which was not organized for a charitable purpose. *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Claim of exemption.
Construction.
Determination of charitable status.
—Applicability.
—Burden on claimant.
—Leased property.
Incidental benefits.
Intent.
Motorcycle club.
Public golf course.

Religious mission home.
Retirement center.

Claim of Exemption.

Taxpayer must satisfy its burden and clearly establish a right to the exemption before an exemption will be granted. In re Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization, 119 Idaho 126, 804 P.2d 299 (1990).

Construction.

Statutes granting tax exemptions must be strictly construed against the taxpayer and cannot be extended by judicial construction so as to create an exemption not specifically authorized. Bogus Basin Recreational Ass'n v. Boise County Bd. of Equalization, 118 Idaho 686, 799 P.2d 974 (1990).

There is nothing ambiguous in the portion of this section which holds that if any building or property belonging to a charitable organization, or any part of such building or property, is leased to anyone, then the building or property is subject to assessment and taxation unless it constitutes less than three percent of the value of the entire building or property. Bogus Basin Recreational Ass'n v. Boise County Bd. of Equalization, 118 Idaho 686, 799 P.2d 974 (1990).

Determination of Charitable Status.

—Applicability.

Determination of an institution's charitable status is necessarily an individual matter, to be decided on a case-by-case basis. Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984).

In determining charitable status of a nonprofit corporation under this section, a number of factors must be considered: (1) the stated purposes of its undertaking, (2) whether its functions are charitable, (3) whether it is supported by donations, (4) whether the recipients of its services are required to pay for the assistance they receive, (5) whether there is general public benefit, (6) whether the income received produces a profit, (7) to whom the assets would go upon dissolution of the corporation, and (8) whether the "charity" provided is based on need. Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984).

To be classed as charitable, an organization need not provide monetary aid to the needy but may provide any of a number of services of public benefit; the word "charitable," in a legal sense, includes every gift for general public use, whether it be for educational, religious, physical or social benefit. Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984).

An institution may be entitled to an exemption where it performs a function which might

otherwise be an obligation of government and, thus, a nonprofit corporation may benefit only a limited group of people and still be considered "charitable" if that group of people possess a need which government might be required to fill; however, where there is no assistance to individuals which might normally require governmental funds, the institution must meet a stricter test: it must provide benefits to the community at large. Canyon County v. Sunny Ridge Manor, Inc., 106 Idaho 98, 675 P.2d 813 (1984).

Determination of a corporation's charitable status for the purposes of this section must be made on a case-by-case basis; it necessarily involves consideration of the particular circumstances of the organization seeking such status, and it is not susceptible of the application of hard and fast rules or definitions. Coeur d'Alene Pub. Golf Club, Inc. v. Kootenai Bd. of Equalization, 106 Idaho 104, 675 P.2d 819 (1984).

It is no bar to an organization's classification as charitable that the public benefit it provides is primarily recreational; public recreational facilities serve community social and physical needs, as well as providing some educational benefits. Coeur d'Alene Pub. Golf Club, Inc. v. Kootenai Bd. of Equalization, 106 Idaho 104, 675 P.2d 819 (1984).

For a corporation's uses to be considered charitable it is essential that they provide some sort of general public benefit. Coeur d'Alene Pub. Golf Club, Inc. v. Kootenai Bd. of Equalization, 106 Idaho 104, 675 P.2d 819 (1984).

Not every nonprofit organization that provides some service to the public is entitled to claim that its property is exempt from taxation. Bogus Basin Recreational Ass'n v. Boise County Bd. of Equalization, 119 Idaho 126, 799 P.2d 974 (1990).

Providing homes and services for the elderly at a cost which can be met by them, and providing affordable housing and medical care which meets the special needs of the elderly in a nonprofit setting is generally considered to be a charitable purpose; however, this section not only requires that the organization be established as a charitable institution, but also that the property claimed as exempt must be used exclusively for charitable purposes. In re Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization, 119 Idaho 126, 804 P.2d 299 (1990).

Nonprofit corporation that provided low income housing to elderly and disabled clients did not perform a function which might otherwise have been an obligation of the government since the housing it provided was sup-

ported by federal tax dollars, not private donations; as such, it merely shifted the burden from one group of taxpayers to another and did not qualify as a charitable organization pursuant to former similar section. *Housing S.W., Inc. v. Washington County*, 128 Idaho 335, 913 P.2d 68 (1996).

—Burden on Claimant.

Exemptions are never presumed, and the burden is on a claimant to establish clearly a right to exemption. *Bogus Basin Recreational Ass'n v. Boise County Bd. of Equalization*, 118 Idaho 686, 799 P.2d 974 (1990).

Taxpayer must satisfy its burden and clearly establish a right to the exemption before an exemption will be granted. In re *Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

—Leased Property.

It is clear that the legislature intended to exclude from exemption only those portions of an otherwise exempt property which are leased or used for commercial purposes; therefore, the portion of a fraternal organization's building leased to the organization's own members was not subject to assessment under this section. *Boise Cent. Trades & Labor Council, Inc. v. Board of Ada County Comm'rs*, 122 Idaho 67, 831 P.2d 535 (1992).

Incidental Benefits.

Although a society of a type contemplated under this section claimed that the independent living complex of its retirement center provided a charitable function in the community because it brought further growth and development to the area, this was an incidental benefit; the charitable nature of the society did not foster the growth, and it is well established that an incidental benefit bestowed upon a community does not constitute a public benefit for tax exemption purposes. In re *Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

Intent.

The rationale and intent of tax exemptions pursuant to this section are based upon legal principles and policy reasons which urge the legislature to encourage and promote sobriety, morality and virtue in the people of this state. In re *Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

Motorcycle Club.

Although motorcycle club provided a form of community service by offering recreational opportunities, club members, not the general public, benefitted most from club's services;

therefore, motorcycle club did not qualify for tax exempt status as a charitable organization. *Owyhee Motorcycle Club, Inc. v. Ada County*, 123 Idaho 962, 855 P.2d 47 (1993).

Public Golf Course.

Where significant expenses of development or operation of public golf course were provided for out of contributions or sale of the corporation's land; the users' green fees covered only a part of the total cost involved in establishing and maintaining the golf course; the corporation was not organized for profit; the board of directors were not compensated; no dividends were distributed; any net income was put back into the golf course in the form of improvements; there was no corporate stock issued, and the articles of incorporation provided that upon dissolution the corporation's property would be donated to charitable uses, the golf course provided a significant benefit to the community in the form of inexpensive recreation and was tax exempt as a charitable corporation. *Coeur d'Alene Pub. Golf Club, Inc. v. Kootenai Bd. of Equalization*, 106 Idaho 104, 675 P.2d 819 (1984).

Religious Mission Home.

Where it was not demonstrated that president's mission home provided a general public benefit, as required by *Canyon County Assessor v. Sunny Ridge Manor*, 106 Idaho 98, 675 P.2d 813 (1984), the use made of the mission home did not qualify for exemption under this section. *Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 849 P.2d 83 (1993).

Retirement Center.

Activities of residential retirement center — the uses to which its property is devoted — which were designed to fulfill its residents' needs for recreation, society, culture, security, etc. would be, if other factors were present, "charitable" within the scope of this section. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984).

One of the factors most frequently looked at in determining if a retirement center is a charitable corporation is the amount of fees required of the residents; an institution may still qualify for a tax exemption even if fees are taken from residents to help cover operating expenses but such fees must usually be nominal or not commensurate with the benefits provided. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984).

Where retirement center charged its residents fees sufficient to cover all of its current operating expenses, as well as to retire the debt on all of its facilities, it was difficult to view such an arrangement as charitable, and while such arrangement was not determina-

tive of noncharitable status, it was a factor of great importance and should be weighted accordingly. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984).

Where residents of retirement center were required to pay completely for the benefits they received, and to be physically able to care for themselves, they were not a group of persons for whom any government assistance would be needed and where the benefits available at the center were reserved for the restricted group of persons who met the entrance qualifications, it could not be said that the center provided a general benefit to the community; moreover, although the center did not operate at a profit, and its articles of incorporation provided that upon dissolution the corporation's assets would be distributed to nonprofit corporations or institutions, these factors were not sufficient to establish charitable status and the center was not a

"charitable corporation" under this section. *Canyon County v. Sunny Ridge Manor, Inc.*, 106 Idaho 98, 675 P.2d 813 (1984).

In order for retirement village to be allowed a tax exemption, the exclusive use of the property must provide some gift or service of public benefit. If the independent living units do not meet the needs of the elderly residents, or if the cost of living in the independent living units is not affordable for those elderly who need the services, then there is no public gift or benefit as contemplated by the statutes. If the only elderly persons residing in the facility are those who can afford to pay the founder's fee or the monthly maintenance fees that are comparable to profit oriented commercial retirement housing in the same community the organization is not entitled to tax exempt status. In *re Evangelical Lutheran Good Samaritan Soc'y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

RESEARCH REFERENCES

A.L.R. — Garage or parking lot as within tax exemption extended to property of educational, charitable, or hospital organizations. 33 A.L.R.3d 938.

Receipt of pay from beneficiaries as affecting tax exemption of charitable institutions. 37 A.L.R.3d 1191.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 A.L.R.3d 640.

Exemption of charitable or educational organization from sales or use tax. 53 A.L.R.3d 748.

63-602D. Property exempt from taxation — Certain hospitals. —

(1) For the purposes of this section, "hospital" means a hospital as defined by chapter 13, title 39, Idaho Code, and includes one (1) or more acute care, outreach, satellite, outpatient, ancillary or support facilities of such hospital whether or not any such individual facility would independently satisfy the definition of hospital.

(2) The following property is exempt from taxation: the real property owned and personal property, including medical equipment, owned or leased by a hospital corporation or a county hospital or hospital district which is operated as a hospital and the necessary grounds used therewith.

(3) If real property, not currently exempt from taxation, is being prepared for use as a hospital, the value of the bare land only shall be taxed while the property is being prepared for use as a hospital. All improvements to and construction on the real property, while it is being prepared for use as a hospital, shall be exempt from taxation. For purposes of this section, property is being "prepared for use as a hospital" if the corporation has begun construction of a hospital project as evidenced by obtaining a building permit that will, on completion, qualify such property for an exemption and, as of the assessment date, has not abandoned the construction. Construction shall not be considered abandoned if it has been delayed by causes and circumstances beyond the corporation's control or when delay is caused by an event that has occurred in the absence of the corporation's willful neglect or intentional acts, omissions or practices engaged in by the corporation for

the purpose of impeding progress. Notwithstanding the foregoing, in no event shall improvements to property that is being prepared for use as a hospital qualify for an exemption from ad valorem property tax under this subsection for more than three (3) consecutive tax years; upon completion of construction and obtaining a certificate of occupancy, the entire real property shall be exempt from taxation if the corporation meets the requirements of subsection (4) of this section; provided, property already exempt or eligible for exemption shall not be affected by the provisions of this subsection.

(4) The corporation must show that the hospital:

(a) Is organized as a nonprofit corporation pursuant to chapter 3, title 30, Idaho Code, or pursuant to equivalent laws in its state of incorporation;

(b) Has received an exemption from taxation from the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code.

(5) The board of equalization shall grant an exemption to the property of:

(a) a county hospital; (b) a hospital district; or (c) any hospital corporation meeting the criteria provided in subsection (4) of this section.

(6) If a hospital corporation uses property for business purposes from which a revenue is derived which is not directly related to the hospital corporation's exempt purposes, then the property shall be assessed and taxed as any other property. If property is used in part by a hospital corporation for such purposes, then the assessor shall determine the value of the entire property and the value of the part used that is not directly related to the hospital corporation's exempt purposes. If the value of the part which is not directly related to the hospital corporation's exempt purposes is determined to be three percent (3%) or less than the value of the entire property, then the property shall remain exempt. If the value of the part which is not directly related to the hospital corporation's exempt purposes is determined to be more than three percent (3%) of the value of the entire property, then the assessor shall assess the proportionate part of the property, including the value of the real estate used for such purposes.

(7) A hospital corporation issued an exemption from property taxation pursuant to this section and operating a hospital having one hundred fifty (150) or more patient beds shall prepare a community benefits report to be filed with the board of equalization by December 31 of each year. The report shall itemize the hospital's amount of unreimbursed services for the prior year (including charity care, bad debt, and underreimbursed care covered through government programs); special services and programs the hospital provides below its actual cost; donated time, funds, subsidies and in-kind services; additions to capital such as physical plant and equipment; and indication of the process the hospital has used to determine general community needs which coincide with the hospital's mission. The report shall be provided as a matter of community information. Neither the submission of the report nor the contents shall be a basis for the approval or denial of a corporation's property tax exemption. [I.C., § 63-602D, as added by 1996, ch. 98, § 7, p. 308; am. 1999, ch. 126, § 1, p. 366; am. 2006, ch. 319, § 1, p. 1016.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 319, in subsections (2) and (5), inserted references to “or a county hospital or hospital district”.

Federal References. — Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. § 501(c)(3).

Compiler’s Notes. — Section 2 of S.L. 1999, ch. 126 reads: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval. This act shall apply retroactively for all property tax purposes commencing January 1, 1999,

and shall further apply retroactively for purposes of property tax assessments, equalization proceedings, exemption proceedings, appeals and court actions which are now pending or that are commenced or arise after the effective date of this act for all tax years commencing on and after January 1, 1996, notwithstanding that the period for which an exemption is claimed is before the effective date of this act.”

Effective Dates. — Section 2 of S.L. 2006, ch. 319 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Determination of charitable status.
Hospital distinguished from retirement center.
Retirement centers.

Determination of Charitable Status.

Taxpayer must satisfy its burden and clearly establish a right to the exemption before an exemption will be granted. *Evangelical Lutheran Good Samaritan Soc’y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

Hospital Distinguished from Retirement Center.

Considering that tax exemptions are construed strictly against the taxpayer, the definition of hospital requires it be more than an institution which provides housing and minimal medical care for those who are ambulatory and otherwise able to care for themselves; independent living units used primarily to provide housing for aged or elderly persons in a retirement community or village did not qualify as a tax exempt hospital. *Evangelical Lutheran Good Samaritan Soc’y (Good Samaritan Village) v. Board of*

Equalization, 119 Idaho 126, 804 P.2d 299 (1990).

Retirement Centers.

In order for retirement village to be allowed a tax exemption, the exclusive use of the property must provide some gift or service of public benefit. If the independent living units do not meet the needs of the elderly residents, or if the cost of living in the independent living units is not affordable for those elderly who need the services, then there is no public gift or benefit as contemplated by the statutes. If the only elderly persons residing in the facility are those who can afford to pay the founder’s fee or the monthly maintenance fees that are comparable to profit oriented commercial retirement housing in the same community the organization is not entitled to tax exempt status. *Evangelical Lutheran Good Samaritan Soc’y (Good Samaritan Village) v. Board of Equalization*, 119 Idaho 126, 804 P.2d 299 (1990).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 362-391.

A.L.R. — Garage or parking lot as within tax exemption extended to property of educational, charitable or hospital organizations. 33 A.L.R.3d 938.

Homes for aged as exempt from property taxation. 37 A.L.R.3d 565.

Nursing homes as exempt from property taxation. 34 A.L.R.5th 529.

63-602E. Property exempt from taxation — Property used for school or educational purposes. — (1) The following property is exempt

from taxation: all property used exclusively for nonprofit school or educational purposes, property used for charter school purposes, and all property from which no profit is derived and which is held or used exclusively for endowment, building or maintenance purposes of schools or educational institutions.

(2) If property is used primarily for nonprofit school purposes or charter school purposes and for business purposes from which a revenue is derived, which revenue is not related to the educational purpose for which the nonprofit school or charter school exists, the assessor shall determine the value of the entire property, of the part used for nonprofit school purposes or charter school purposes, and of the part used for such unrelated business purposes. The portion of the building used for nonprofit school purposes or charter school purposes and for business and administration of the nonprofit school or charter school shall be exempt from taxation. [I.C., § 63-602E, as added by 1996, ch. 98, § 7, p. 308; am. 2003, ch. 222, § 1, p. 574; am. 2006, ch. 366, § 1, p. 1104.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 366, inserted “nonprofit school purposes or” and “nonprofit school or” preceding “charter” throughout subsection (2).

Effective Dates. — Section 2 of S.L. 2003, ch. 222 declared an emergency retroactively

to January 1, 2003 and approved April 4, 2003.

Section 2 of S.L. 2006, ch. 366 declared an emergency retroactively to January 1, 2006 and approved April 7, 2006.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Multiple Use Property.

The exemptions from taxation are not mutually exclusive: real property utilized by religious organizations for summer encampments should be exempt from ad valorem taxes, since all activities conducted thereon, although in some aspects charitable, and in

some aspects educational, are nevertheless directly related to the religious purposes for which such groups are organized. *North Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai County*, 94 Idaho 644, 496 P.2d 105 (1972).

RESEARCH REFERENCES

A.L.R. — Garage or parking lot as within tax exemption extended to property of educational, charitable or hospital organizations. 33 A.L.R.3d 938.

Tax exemption of property of educational body as extending to property used by personnel as living quarters. 55 A.L.R.3d 485.

63-602F. Property exempt from taxation. — The following property is exempt from taxation:

- (1) Possessory rights to public lands;
- (2) Mining claims not patented;
- (3) All public cemeteries;
- (4) All public libraries. [I.C., § 63-602F, as added by 1996, ch. 98, § 7, p. 308.]

STATUTORY NOTES

Cross References. — Profits of mines, Public libraries exempt from taxation, taxation of, §§ 63-2801 — 63-2811. Const., Art. 7, § 4.

RESEARCH REFERENCES

A.L.R. — Availability of tax exemption to property held on lease from exempt owner. 54 A.L.R.3d 402.

63-602G. Property exempt from taxation — Homestead. —

(1) During the tax year 2006 and each year thereafter, subject to annual adjustment as provided herein, the first seventy-five thousand dollars (\$75,000) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, or fifty percent (50%) of the market value for assessment purposes of the homestead as that term is defined in section 63-701, Idaho Code, whichever is the lesser, shall be exempt from property taxation. Beginning for tax year 2007, the state tax commission shall publish adjustments to the maximum amount subject to property tax exemption to reflect cost-of-living fluctuations. The adjustments shall effect changes in the amount subject to tax exemption by a percentage equal as near as practicable to the annual increase in the Idaho housing price index as determined by the United States office of federal housing enterprise oversight. The state tax commission shall publish the adjustments required by this subsection each and every year the office of federal housing enterprise oversight announces a change in the Idaho housing price index. The adjustments shall be published no later than October 1 of each year and shall be effective for claims filed in and for the following property tax year. The publication of adjustments under this subsection shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge.

(2) The exemption allowed by this section may be granted only if:

(a) The homestead is owner-occupied and used as the primary dwelling place of the owner as of January 1, provided that in the event the homestead is owner-occupied after January 1 but before April 15, the owner of the property is entitled to the exemption. The homestead may consist of part of a multidwelling or multipurpose building and shall include all of such dwelling or building except any portion used exclusively for anything other than the primary dwelling of the owner. The presence of an office in a homestead, which office is used for multiple purposes, including business and personal use, shall not prevent the owner from claiming the exemption provided in this section; and

(b) The tax commission has certified to the board of county commissioners that all properties in the county which are subject to appraisal by the county assessor have, in fact, been appraised uniformly so as to secure a just valuation for all property within the county; and

(c) The owner has certified to the county assessor by April 15 that:

(i) He is making application for the exemption allowed by this section;

- (ii) That the homestead is his primary dwelling place; and
- (iii) That he has not made application in any other county for the exemption, and has not made application for the exemption on any other homestead in the county.

(d) For the purpose of this section, the definition of "owner" shall be the same definition set forth in section 63-701(7), Idaho Code.

When an "owner," pursuant to the provisions of section 63-701(7), Idaho Code, is any person who is the beneficiary of a revocable or irrevocable trust, or who is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, he or she may provide proof of the trust, limited partnership, limited liability company, or corporation in the manner set forth in section 63-703(4), Idaho Code.

(e) Any owner may request in writing the return of all copies of any documents submitted with the affidavit set forth in section 63-703(4), Idaho Code, that are held by a county assessor, and the copies shall be returned by the county assessor upon submission of the affidavit in proper form.

(f) For the purpose of this section, the definition of "primary dwelling place" shall be the same definition set forth in section 63-701(8), Idaho Code.

(g) For the purpose of this section, the definition of "occupied" shall be the same definition set forth in section 63-701(6), Idaho Code.

(3) An owner need only make application for the exemption described in subsection (1) of this section once, as long as all of the following conditions are met:

(a) The owner has received the exemption during the previous year as a result of his making a valid application as defined in subsection (2)(c) of this section.

(b) The owner or beneficiary, partner, member or shareholder, as appropriate, still occupies the same homestead for which the owner made application.

(c) The homestead described in subsection (3)(b) of this section is owner-occupied or occupied by a beneficiary, partner, member or shareholder, as appropriate, and used as the primary dwelling place of the owner or beneficiary, partner, member or shareholder, as appropriate, as of January 1; provided however, that in the event the homestead is owner-occupied after January 1, but before April 15, the owner of the property is entitled to the exemption.

(4) The exemption allowed by this section must be taken before the reduction in taxes provided by sections 63-701 through 63-710, Idaho Code, is applied.

(5) Recovery of property tax exemptions allowed by this section but improperly claimed or approved:

(a) Upon discovery of evidence, facts or circumstances indicating any exemption allowed by this section was improperly claimed or approved, the county assessor shall decide whether the exemption claimed should have been allowed and if not, notify the taxpayer in writing, assess a recovery of property tax and notify the county treasurer of this assess-

ment. If the county assessor determined that an exemption was improperly approved as a result of county error, the county assessor shall present the discovered evidence, facts or circumstances from the improperly approved exemption to the board of county commissioners, at which time the board may waive a recovery of the property tax and notify such taxpayer in writing.

(b) When information indicating that an improper claim for the exemption allowed by this section is discovered by the state tax commission, the state tax commission may disclose this information to the appropriate county assessor, board of county commissioners and county treasurer. Information disclosed to county officials by the state tax commission under this subsection may be used to decide the validity of any entitlement to the exemption provided in this section and is not otherwise subject to public disclosure pursuant to chapter 3, title 9, Idaho Code.

(c) The assessment and collection of the recovery of property tax must begin within the seven (7) year period beginning the date the assessment notice reflecting the improperly claimed or approved exemption was required to be mailed to the taxpayer.

(d) The taxpayer may appeal to the board of county commissioners the decision by the county assessor to assess the recovery of property tax within thirty (30) days of the date the county assessor sent the notice to the taxpayer pursuant to this section. The board may waive the collection of all or part of any costs, late charges and interest, in order to facilitate the collection of the recovery of the property tax.

(e) For purposes of calculating the tax, the amount of the recovered property tax shall be for each year the exemption allowed by this section was improperly claimed or approved, up to a maximum of seven (7) years. The amount of the recovery of property tax shall be calculated using the product of the amount of exempted value for each year multiplied by the levy for that year plus costs, late charges and interest for each year at the rates equal to those provided for delinquent property taxes during that year.

(f) Any recovery of property tax shall be due and payable no later than the date provided for property taxes in section 63-903, Idaho Code, and if not timely paid, late charges and interest, beginning the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section, shall be calculated at the current rate provided for property taxes.

(g) Recovered property taxes shall be billed, collected and distributed in the same manner as property taxes, except each taxing district or unit shall be notified of the amount of any recovered property taxes included in any distribution.

(h) Thirty (30) days after the taxpayer is notified, as provided in subsection (5)(a) of this section, the assessor shall record a notice of intent to attach a lien. Upon the payment in full of such recovered property taxes prior to the attachment of the lien as provided in subsection (5)(i) of this section, or upon the successful appeal by the taxpayer, the county assessor shall record a rescission of the intent to attach a lien within seven (7)

business days of receiving such payment or within seven (7) business days of the county commissioners' decision granting the appeal. If the real property is sold to a bona fide purchaser for value, prior to the recording of the notice of the intent to attach a lien, the county assessor and treasurer shall cease the recovery of such unpaid recovered property tax.

(i) Any unpaid recovered property taxes shall become a lien upon the real property in the same manner as provided for property taxes in section 63-206, Idaho Code, except such lien shall attach as of the first day of January in the year following the year the county assessor sent the notice to the taxpayer pursuant to this section.

(j) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection as recovery of property tax shall be treated as property tax revenue.

(6) The legislature declares that this exemption is necessary and just.

(7) A homestead having previously qualified for exemption under this section in the preceding year, shall not lose such qualification due to: the owner's, beneficiary's, partner's, member's or shareholder's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code, or because the homestead has been leased because the owner, beneficiary, partner, member or shareholder is absent in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone by the owner, beneficiary, partner, member or shareholder, as appropriate, as defined in section 112 of the Internal Revenue Code, and such homestead would have otherwise qualified under this section, then the board of county commissioners of the county in which the homestead is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied. [I.C., § 63-602G, as added by 1996, ch. 98, § 7, p. 308; am. 1997, ch. 358, § 1, p. 1058; am. 1999, ch. 382, § 1, p. 1047; am. 2001, ch. 69, § 1, p. 129; am. 2001, ch. 166, § 1, p. 576; am. 2004, ch. 156, § 1, p. 495; am. 2004, ch. 190, § 1, p. 597; am. 2005, ch. 283, § 1, p. 919; am. 2006, ch. 429, § 1, p. 1313; am. 2007, ch. 39, § 1, p. 96.]

STATUTORY NOTES

Amendments. — This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 156, § 1, effective March 23, 2004 and retroactively to January 1, 2004, rewrote subsection (2)(d) and substituted "section 63-703(4), Idaho Code," for "paragraph (d) of this subsection" in subsection (2)(e).

The 2004 amendment, by ch. 190, § 1, effective July 1, 2004, inserted present subsection (5) and renumbered former subsections (5) and (6) as subsections (6) and (7).

The 2006 amendment, by ch. 429, throughout the section, substituted "homestead" for

"residential improvements"; and in subsection (1), substituted "2006" for "1983", inserted "subject to annual adjustment as provided herein" substituted "first seventy-five thousand" for "first fifty thousand" inserted "as that term is defined in section 63-701, Idaho Code" and added the second through sixth sentences.

The 2007 amendment, by ch. 39, added the last sentence in subsections (5)(a) and (5)(d); in the first sentence of subsection (5)(e), added "For purposes of calculating the tax," substituted "the amount of the recovered property tax" for "A recovery of property tax," deleted "the lesser of" preceding "a maximum

of seven (7) years" and "or until the property tax was transferred to a bona fide purchaser for value" from the end; and added subsection (5)(h) and made related redesignations.

Federal References. — Section 112 of the Internal Revenue Code, referred to in subsection (7), is codified as 26 U.S.C. § 112.

Effective Dates. — Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

Section 8 of S.L. 2004, ch. 156 declared an

emergency retroactively to January 1, 2004. Approved March 23, 2004.

Section 2 of S.L. 2005, ch. 283 declared an emergency retroactively to January 1, 2005 and approved April 5, 2005.

Section 2 of S.L. 2006, ch. 429 declared an emergency retroactively to January 1, 2006 and approved April 12, 2006.

Section 2 of S.L. 2007, ch. 39 declared an emergency retroactively to January 1, 2007 and approved March 2, 2007.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.
Impairment of contracts.
Owners.

Constitutionality.

Homeowners are not a suspect class and the exemption under this section for homeowners furthers legitimate state interests, such as fostering home ownership and equalizing the tax burden between residential and business properties; therefore, this section does not violate the equal protection provisions of Idaho Const., Art. 1, § 2 or the Fourth Amendment to the United States Constitution. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

The provision of Const., Art. 7, § 5 which expressly authorizes "such exemptions from taxation as from time to time shall seem necessary and just ..." does not mean that property may be wholly, but not partially, exempt; therefore, the partial exemption under this section of owner-occupied residential improvements does not violate Idaho Const.,

Art. 7, §§ 2 or 5. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

Impairment of Contracts.

This section's effect on property tax revenues and on the government's ability to pay its bond obligations is too speculative to impair the obligation of contracts in violation of U.S. Const., Art. 1, § 10. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

Owners.

Where agreement between sellers and taxpayers was found to be a contract to purchase home, taxpayers were owners of the property for purposes of this section and were entitled to homeowners' exemption. *Ada County Assessor v. Taylor*, 124 Idaho 550, 861 P.2d 1215 (1993).

63-602H. Value of residential property in certain zoned areas. —

(1) Residential property located in an area which was previously zoned residential but has been changed to a zone other than residential shall be appraised, assessed and taxed as if such property were in an area zoned residential as long as such property is continuously used by the owner thereof solely for residential purposes.

(2) "Residential property" as used herein is defined as any tract of three (3) acres or less which is used by the owner thereof solely for residential purposes. [I.C., § 63-602H, as added by 1996, ch. 98, § 7, p. 308.]

63-602I. Property exempt from taxation — Household goods, wearing apparel and other personal effects in certain cases. — The following property is exempt from taxation: all household goods, furniture and furnishings actually in use by the owner in his private home or dwelling place, or temporarily in storage pending delivery by a vendor to him for his personal use, and not for sale or in commercial use, and all wearing apparel

and other personal effects held by any person for the exclusive use and benefit of himself or family and not for sale or commercial use. [I.C., § 63-602I, as added by 1996, ch. 98, § 7, p. 308.]

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 332-335.

63-602J. Property exempt from taxation — Motor vehicles and vessels properly registered. — The following property is exempt from taxation: motor vehicles properly registered and for which the required fee has been paid under the provisions of the laws of the state of Idaho, recreational vehicles for which the fees imposed by law have been paid and vessels for which the certificate of registration fees imposed by law have been paid. [I.C., § 63-602J, as added by 1996, ch. 98, § 7, p. 308.]

STATUTORY NOTES

Cross References. — Motor vehicle operating fee in lieu of property tax, §§ 49-401, 49-426. Recreational vehicles, license fees, §§ 49-444 — 49-448.

63-602K. Property exempt from taxation — Speculative portion of value of agricultural land. — (1) The speculative portion of the value of land actively devoted to agriculture is exempt from taxation.

(2) "Land actively devoted to agriculture" means that property defined by section 63-604, Idaho Code. For purposes of this section, the act of platting land actively devoted to agriculture does not, in and of itself, cause the land to lose its status as land being actively devoted to agriculture if the land otherwise qualifies for the exemption under this section.

(3) "Speculative portion" shall mean that portion of the value of agricultural land which represents the excess over the actual use value of such land established by comparable sales data compared to value established by capitalization of economic rent or long-term average crop rental at a capitalization rate which shall be the rate of interest charged by the Spokane office of the farm credit system averaged over the immediate past five (5) years plus a component for the local tax rate.

(4) The state tax commission shall adopt rules implementing this section which shall provide the procedure by which it shall establish economic rent, average crop rental and capitalization rates and for the publication of crop prices and the discount rate to be used to determine the capitalization rate. [I.C., § 63-602K, as added by 1996, ch. 98, § 7, p. 308; am. 2004, ch. 27, § 4, p. 43; am. 2006, ch. 233, § 3, p. 691.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 233, in subsections (1) and (2), inserted "actively"; and added the last sentence in subsection (2).

Effective Dates. — Section 4 of S.L. 2006, ch. 233 declared an emergency retroactively to January 1, 2006 and approved March 30, 2006.

JUDICIAL DECISIONS

Construction with Other Law.

Former Idaho Admin. Code 35.01.165(04)(d) exceeded the authority granted by the tax statutes, making the regulation unenforceable, and the district court properly awarded the taxpayer an agricultural exemption, recovery of the taxes paid

under protest, together with interest accrued. *Roeder Holdings, L.L.C. v. Bd. of Equalization*, 136 Idaho 809, 41 P.3d 237 (2001).

Cited in: *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 108 P.3d 349 (2005).

63-602L. Property exempt from taxation — Intangible personal property. — (1) The following intangible personal property is exempt from taxation: capital stock and bonds. The deposits in national banks, state banks, and savings and loan associations. Shares and accounts of savings and loan associations, credit unions or associations organized under the laws of the state of Idaho for the purpose of accumulating the savings and funds of their members and lending the same to their members. Goodwill, customer lists, contracts and contract rights, patents, trademarks, custom computer programs as defined in section 63-3616, Idaho Code, copyrights, trade secrets, franchises, licenses, rights-of-way which are possessory only and not accompanied by title.

(2) The commission shall promulgate rules which shall provide for the exclusion of exempt intangible personal property from taxable value of operating property. Such rules shall allow each taxpayer the right to elect one (1) of the following three (3) methods for exclusion of exempt intangible personal property from its taxable value:

- (a) Separate exclusion of the exempt intangible personal property at the system level value; or
- (b) Separate exclusion of the exempt intangible personal property at the state allocated value; or
- (c) Exclusion of the exempt intangible personal property by valuation of only tangible personal property and nonexempt intangible personal property using valuation models which do not impound or include values of the exempt intangible personal property. [I.C., § 63-602L, as added by 1996, ch. 98, § 7, p. 308; am. 1998, ch. 400, § 4, p. 1249.]

STATUTORY NOTES

Cross References. — Corporate credit unions, exemptions, § 26-2186.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 350-361.

63-602M. Property exempt from taxation — Certain secured dues and credits. — The following property is exempt from taxation: all dues and credits secured by mortgage, trust deed or other liens except as otherwise provided by law. [I.C., § 63-602M, as added by 1996, ch. 98, § 7, p. 308.]

63-602N. Property exempt from taxation — Irrigation water and structures — Operating property of irrigation districts or canal companies. — (1) Water rights for the irrigation of lands are exempt from taxation.

(2) Canals, ditches, pipelines, flumes, aqueducts, reservoirs, dams, and any other necessary facility used primarily for the conveyance, storage, or providing of water for the irrigation of lands, are exempt from taxation to the extent irrigation water is thereby conveyed, stored or diverted; provided that if any portion of such property is used for purposes other than irrigation of lands or the conveyance, storage, or providing of water to a nonprofit irrigation company or irrigation district, the assessor shall determine the entire value of such property so used and assess the proportionate part of such property that is devoted to such use.

(3) The operating property of all organizations, whether incorporated or unincorporated, heretofore organized or which shall hereafter be organized, for the operation, maintenance, or management of an irrigation project or irrigation works or system or for the purpose of furnishing water to its landowners, members or shareholders, the control of which is actually vested in those entitled to the use of the water from such irrigation works or system for the irrigation of lands to which the water from such irrigation works or system is appurtenant, is exempt from taxation. The term "operating property" as used in this section shall include all real and personal property owned, used, operated or occupied primarily for the maintenance and operation of such irrigation project or irrigation works and system or in conducting its business of furnishing water to its landowners, members or shareholders and shall include all title and interest in such property as owner, lessee, or otherwise; provided, that if any portion of such operating property is used for commercial purposes by others than its landowners, members or shareholders, the assessor shall determine the entire value of such portion of the operating property so used and assess the proportionate part of such operating property that is used for commercial purposes. [I.C., § 63-602N, as added by 1996, ch. 98, § 7, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Irrigation Projects and Systems.

The plain meaning of the term "irrigation project" or "irrigation system" must be confined to a project or system constructed and operated for the purpose of irrigation; the

terms do not reach a project or system constructed or operated for the purpose of generation of hydroelectric power. *Boise-Kuna Irrigation Dist. v. Idaho State Tax Comm'n*, 119 Idaho 269, 805 P.2d 475 (1991).

63-602O. Property exempt from taxation — Property used for generating and delivering electrical power for irrigation or drainage purposes and property used for transmitting and delivering natural gas energy for irrigation or drainage purposes. — The following property is exempt from taxation: property used for generating or delivering electrical power to the extent that such property is used for furnishing power for pumping water for irrigation or drainage purposes on

lands in the state of Idaho, and property used for transmitting or delivering natural gas energy to the extent that such property is used for furnishing natural gas energy for pumping water for irrigation or drainage purposes on lands in the state of Idaho. This exemption shall accrue to the benefit of the consumer of such power, or the consumer of such natural gas energy, except in cases where the water so pumped is sold or rented to irrigate lands, in which event the property used for generating or delivering power, and property used for transmitting or delivering natural gas energy, shall be assessed for taxation to the extent that such water is so sold or rented. [I.C., § 63-602O, as added by 1996, ch. 98, § 7, p. 308.]

63-602P. Property exempt from taxation — Facilities for water or air pollution control. — (1) The following property is exempt from taxation: facilities, installations, machinery or equipment, attached or unattached to real property, and designed, installed and utilized in the elimination, control or prevention of water or air pollution, or, in event such facilities, installations, equipment or machinery shall also serve other beneficial purposes and uses, such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to elimination, control or prevention of water or air pollution. The state tax commission or county assessor shall determine such exempt portion, and shall not include as exempt any portion of any facilities which have value as the specific source of marketable byproducts.

(2) If any water corporation, as defined by section 61-125, Idaho Code, regulated by the Idaho public utilities commission is or has been ordered by the state board of health [and welfare] or the Idaho public utilities commission to install equipment designed and utilized in the elimination, control or prevention of water pollution, the Idaho public utilities commission shall notify the Idaho state tax commission of the percentage such property bears to the total invested plant of the company and said portion shall be exempt from property taxation. Said percentage reported to the Idaho state tax commission by the Idaho public utilities commission may be contested by any person or party at a public hearing held before the Idaho state tax commission. [I.C., § 63-602P, as added by 1996, ch. 98, § 7, p. 308.]

STATUTORY NOTES

Cross References. — Public utilities commission, § 63-602.

Compiler's Notes. — The bracketed insertion in subsection (2) was made by the com-

piler to reflect a name change authorized by S.L. 1973, ch. 286, § 1 and S.L. 1974, ch. 23, § 47. See § 56-1006.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Equipment Not Exempt.

A taxpayer's contention that certain equipment used in a lumber mill operation was pollution control equipment and that the trial

court erred in failing to find it exempt from the state sales tax was without merit. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

63-602Q. Property exempt from taxation — Certain cooperative telephone lines. — The following property is exempt from taxation: cooperative telephone lines from which no profit is derived and upon or over which no fees or tolls are charged or collected. This exemption shall only apply to any cooperative telephone system having twenty-five (25) or less subscribers or users. [I.C., § 63-602Q, as added by 1996, ch. 98, § 7, p. 308.]

63-602R. Property exempt from taxation — Agricultural crops. — The following property is exempt from property taxation: agricultural crops, whether growing or held for use or sale, while the legal or equitable title remains with the producer, and fruit and nut-bearing trees and grapevines; provided that nothing herein contained shall be construed to exempt timber, forest, forest land, or forest products from the provisions of chapter 17, title 63, Idaho Code. [I.C., § 63-602R, as added by 1996, ch. 98, § 7, p. 308.]

63-602S. Property exempt from taxation — Fruits and vegetables held for human consumption, and seeds, shipped out of the state. —

(1) Any person, firm or corporation engaged in the storing or processing of fruits or vegetables held for human consumption or shipment of seeds out of the state must file a full declaration of such property as of the assessment date with the county assessor. On any assessment made on fruits and vegetables held for sale for human consumption, or any processed product, thereof, or seeds, in the hands of farmers, producers, or of a processor, or while being transported to or held in storage in a public or private warehouse structure, the board of equalization of the county in which the assessment was made, at its meeting on the first Monday of December as provided by law for equalizing the assessments of personal property on the subsequent personal property assessment roll, shall cancel such assessments in whole or proportionate part on receipt of sufficient documentary proof that the personal property so assessed was actually sold and transported or shipped to another point outside the state of Idaho on or before December 1 of the current year of assessment. No such cancellation shall be made unless such proof be furnished to said board on or before such meeting in such year.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business.

(4) This exemption shall only apply to private storage from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually. [I.C., § 63-602S, as added by 1996, ch. 98, § 7, p. 308.]

63-602T. Property exempt from taxation — Personal property manufactured or processed in this state and actually sold and shipped out of state. — (1) Any person, firm, or corporation engaged in

the manufacture or processing of personal property in this state which property is stored in a public or private warehouse structure or area must file a full declaration of such property as of the assessment date with the county assessor. On any assessment made on personal property manufactured or processed in this state by person [persons], firms or corporations having a domicile or place of business in Idaho, being stored in a public or private warehouse structure or area, the board of equalization of the county in which such assessment was made, at its meeting on the first Monday of December as provided by law for equalizing the assessments of personal property on the subsequent personal property assessment roll, shall cancel such assessments in whole or proportionate part on receipt of sufficient documentary proof that the personal property so assessed was actually sold and transported or shipped to another point outside the state of Idaho on or before December 1 of the current year of assessment. No such cancellation shall be made unless such proof be furnished to said board on or before such meeting in such year. The term "manufactured" or "processed" as used herein refers to personal property which has been fabricated, constructed, assembled, milled or converted into a finished product and is not intended to include any personal property undergoing a stage of manufacture or process prior to the end finished product.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business.

(4) Private or public warehouse area is intended to mean for purposes of this act open storage or place properly identified which is normally used to store personal property by any person, firm or corporation.

(5) This exemption shall only apply to a private warehouse, private and public warehousing area from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually. [I.C., § 63-602T, as added by 1996, ch. 98, § 7, p. 308.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word in the second sentence of subsection (1) was added by the compiler.

RESEARCH REFERENCES

A.L.R. — What constitutes manufacturing and who is a manufacturer under the tax laws. 17 A.L.R.3d 7.

63-602U. Property exempt from taxation — Personal property shipped into the state and stored in a public or private warehouse structure, and designated for shipment out of the state to be considered in transit. — (1) Personal property shipped into this state

and stored in a public or private warehouse structure, which property is not offered for sale in Idaho and designated for reshipment outside of the state, is considered to be "in transit" and shall be exempt from taxation. Such property shall not be deprived of exemption because while in storage, awaiting such further shipment, such personal property is labeled, packaged, disassembled, divided, broken in bulk, relabeled, or repackaged, or because the personal property is held for resale to customers outside the state of Idaho. Provided that all personal property claimed to be exempt "in transit" be labeled as such and shall be designated immediately upon receipt as being in transit upon the books and records of the warehouse, whether public or private, wherein the same is located. The books and records of such storage warehouse shall contain a full, true and correct inventory of all such property, together with the date of receipt of same, the point of origin, the date of its withdrawal, and, if known, the ultimate destination thereof. The books and records pertaining to the storage of any such in transit property shall be opened to inspection by any taxing authority in the state of Idaho having jurisdiction thereof upon reasonable demand having been made.

(2) Public warehousing is the storing of personal property by any person, firm or corporation regularly engaged in the business of storing such property for hire.

(3) Private warehousing is the storage of personal property by any person, firm or corporation which is carrying on the activity of warehousing or storing such property only in the operation of his or its own business. This exemption shall only apply to private storage from and after a notice, describing by address and physical premises, is filed with the county assessor, which notice shall be filed annually. [I.C., § 63-602U, as added by 1996, ch. 98, § 7, p. 308.]

63-602V. Property exempt from taxation — Personal property shipped into the state and stored in the original package. — Personal property of any person, firm or corporation, having neither domicile nor place of business in this state, which property upon being brought or shipped into this state is forthwith stored in the original package in a warehouse operated for public use and for hire, shall, while so stored, be deemed in transit and shall be exempt from taxation. [I.C., § 63-602V, as added by 1996, ch. 98, § 7, p. 308.]

63-602W. Business inventory exempt from taxation — Business inventory that is a component of real property that is a single family dwelling. — The following property is exempt from property taxation: business inventory. For the purpose of this section, "business inventory" means all items of tangible personal property or other property described as:

(1) All livestock, fur-bearing animals, fish, fowl and bees.

(2) All nursery stock, stock-in-trade, merchandise, products, finished or partly finished goods, raw materials, and all forest products subject to the provisions of chapter 17, title 63, Idaho Code, supplies, containers and other personal property which is held for sale or consumption in the ordinary course of the taxpayer's manufacturing, farming, wholesale jobbing, or merchandising business.

(3) Residential improvements never occupied. Once residential improvements are occupied as defined in section 63-317, Idaho Code, they shall be subject to the tax provided by section 63-317, Idaho Code. The provisions of section 63-602Y, Idaho Code, shall not apply to the exemption provided by this subsection. The exemption provided by this subsection applies only to improvements to real property, and only until first occupied. For purposes of this section, the term “residential improvements” means only:

- (a) Single family residences; or
- (b) Residential townhouses; or
- (c) Residential condominium units.

The nonresidential portion of an improvement to real property that is used or is to be used for residential and nonresidential purposes does not qualify for the exemption provided by this section. If an improvement contains multiple residential units, each such unit shall lose the exemption provided in this section when it becomes occupied. [I.C., § 63-602W, as added by 1996, ch. 98, § 7, p. 308; am. 1997, ch. 242, § 1, p. 703; am. 1998, ch. 95, § 1, p. 341.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1997, ch. 242 provided that the act should be in effect on and after January 1, 1998.
Section 3 of S.L. 1998, ch. 95 declared an

emergency and made the act effective retroactively to January 1, 1998. Approved March 19, 1998.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Business machines. *
Claim for exemption.
Constitutionality.
Leasing business property.
Purpose of exemption.

Business Machines.

A corporation’s business machines are “business inventory” when they are not in lease status, since it is then stock in trade, merchandise, or personal property held for sale or consumption in the course of business. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Claim for Exemption.

Where taxpayer alleged that his business inventory, which was exempted from taxation under this section, was nevertheless assessed for ad valorem taxation, taxpayer was required to pursue his claim first before the board of county commissioners prior to his seeking relief in district court by way of declaratory judgment and refund of taxes paid under protest. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

Constitutionality.

It cannot be held that the classification of the property under this section is arbitrary, unreasonable or unjust so as to warrant setting it aside as unconstitutional, as the granting of the exemptions is for the benefit of the economic welfare of the state of Idaho; nor is the classification violative of the Fourteenth Amendment of the U.S. Constitution. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

The granting of an exemption from ad valorem taxation of “all livestock, fur-bearing animals, fish, fowl and bees” by exempting business inventory and describing such property as business inventory was to use a fiction, but such exemption is valid, since under Idaho Const., Art. 7, § 5, the legislature had power and authority to grant the exemption in a direct manner, had it wanted to.

Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Fostering the livestock and farming industry in Idaho is a valid purpose. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Leasing Business Property.

Property owned by a business should not be exempted from ad valorem taxation as business inventory when it is leased to customers of the business. Xerox Corp. v. Ada County

Assessor, 101 Idaho 138, 609 P.2d 1129 (1980).

Purpose of Exemption.

A fundamental purpose of this legislation was to relieve the ordinary merchant or businessman of the inequitable ad valorem taxes which had been assessed against him on goods, wares, and merchandise which he kept in stock solely for purposes of resale and not for personal use. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

63-602X. Property exempt from taxation — Casualty loss. —

(1) The following property is exempt from taxation: real and personal property which has been damaged by an event causing casualty loss to all or a portion of the property. The board of equalization on a case-by-case basis shall determine whether to grant an exemption.

An exemption granted under this section shall be for the year in which the real or personal property has been damaged or destroyed. Claimants seeking exemption under this section must apply to the county board of equalization. The application must be in writing on a form provided by the county and must identify the claimant, the date of the casualty loss, and the property that has been damaged or destroyed. The application must be filed on or before the end of the county's normal business hours on the fourth Monday of June of the year in which the casualty loss occurred. If an exemption is granted, the value of the property subject to taxation shall be calculated by dividing the number of days in the year prior to the casualty loss by the number of days in the year and multiplying the resulting quotient by the market value of the property less any applicable exemptions, as of 12:01 a.m. on the first day of January of the tax year.

(2) The county board of equalization shall decide whether to grant such claim for exemption on or before the second Monday of July of the year in which the claim is filed. If granted, either in whole or in part, the county board of equalization shall order all necessary adjustments made in the property roll. [I.C., § 63-602X, as added by 1996, ch. 98, § 7, p. 308; am. 1997, ch. 117, § 20, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full

force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-602Y. Property exempt from taxation — Effect of change of status. —

(1) If any property, real or personal, which is exempted from taxation on the first day of January shall thereafter have a changed status during the year, either by change in ownership or otherwise, in a manner that if the changed status had existed on the first day of January the property would have been taxable at that time, then the property shall be assessed in the following manner: If the status changed before the first day of April, then for its full market value for assessment purposes; if on the first day of April and before the first day of July, then for three-fourths (3/4) of its

full market value for assessment purposes; if on the first day of July and before the first day of October, then for one-half (1/2) of its full market value for assessment purposes; and if the status changed on or after the first day of October, then for one-fourth (1/4) of its full market value for assessment purposes. However, if the changed status results from the leasing or rental of property normally constituting business inventory, the same shall be subject to property tax only for the period it is so leased or rented and upon its return to business inventory shall again be exempt. Each owner of such property shall, on the first Monday of November of each year, file with the assessor for the home county of the owner with a copy for every other county involved, a statement listing and sufficiently identifying such property, the counties where it was situated and the periods of the preceding twelve (12) calendar months during which the property was leased or rented within each county.

(2) At the time of filing such statement with the assessor of his home county, the owner of such leased or rented property shall provide such assessor with a copy for every other county involved.

(3) The assessor of such home county shall ascertain the portion of said preceding twelve (12) calendar months during which such property was leased or rented in the home county and shall enter such property upon the subsequent or missed property roll and the tax collector of the home county shall compute and collect the property tax thereon. The assessor shall indorse the full market value for assessment purposes of each item of such property upon copies of the statement and the owner of the property shall, within five (5) days, furnish an indorsed copy of the owner's statement to the assessor of each county of the state wherein such property was located during the lease or rental period, and each such other county assessor shall likewise assess and the tax collector shall collect the property taxes due for the portion of the preceding twelve (12) calendar months the leased or rented property was situate in their county.

(4) The property taxes due thereon shall be a first and prior lien upon such property and all real and personal property of the owner thereof within the state until all property taxes due have been paid. [I.C., § 63-602Y, as added by 1996, ch. 98, § 7, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Conditions affecting assessment.
Leasing of business inventory.

Conditions Affecting Assessment.

Where the logs were severed, the risk of loss under the contract accrued to corporate purchaser and where the government had sufficient control over purchaser to guarantee payment of the logs, trial court was correct in

determining that the beneficial and actual property in the logs was vested in purchaser at the time of assessment notwithstanding that the retention of title by the government was for scaling purposes, which occurred outside state and state was entitled to collect

personal property tax as provided by statute. *Tree Farmers, Inc. v. Goeckner*, 86 Idaho 290, 385 P.2d 649 (1963).

exempted from ad valorem taxation as business inventory when it is leased to customers of the business. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Leasing of Business Inventory.

Property owned by a business should not be

63-602Z. Exemption from occupancy tax. — Any improvement to real property exempt from property taxation under the laws of this state or under the laws of the United States shall be exempt from occupancy taxation. [I.C., § 63-602Z, as added by 1996, ch. 98, § 7, p. 308.]

63-602AA. Property exempt from taxation — Exceptional situations. — (1) The following property is exempt or partially exempt from taxation: real and personal property belonging to persons who, because of unusual circumstances which affect their ability to pay the property tax, should be relieved from paying all or part of said tax in order to avoid undue hardship, which undue hardship must be determined by the board of equalization.

(2) An exceptional value exemption granted under this section shall be for the current tax year only and property exempted hereunder shall continue to be listed and assessed for the ensuing tax years as other property.

(3) Claimants seeking exemption under this section must apply each year to the board of equalization and such claim must be submitted by June 20 of the current year. The board of equalization must consider and act on all such claims no later than the second Monday of July.

(4) Each person claiming such exemption shall give a sworn statement containing full and complete information of his financial status to such board and shall make true answers to all questions propounded in writing, or otherwise, touching such person's right to the exemption claimed. The chairman of the board shall have authority to administer oaths to each person appearing as a claimant for such exemption and in addition to such examination each claimant shall subscribe to and swear that his answers to questions propounded on written forms to be prescribed by the state tax commission are true, and which sworn statement shall be kept and filed by the clerk of the county board of equalization. The board may, in its discretion and for good cause shown, allow an agent or some person acting for and on behalf of the claimant to make the claim for exemption for any claimant in the manner herein provided, or where a person unable to make such sworn statement, his wife, widow, guardian or personal representative, or other person having knowledge of the facts, may make such sworn statement in his stead.

(5) The county board of equalization shall decide and determine from each examination and from each written claim for exemption whether or not such person is entitled to the exemption claimed or to any part thereof, and shall make a record thereof accordingly. [I.C., § 63-602AA, as added by 1996, ch. 98, § 7, p. 308.]

63-602BB. Partial exemption for remediated land. — (1) During the tax year 1997 and each year thereafter, a site as defined in section 39-7203, Idaho Code, and qualifying under chapter 72, title 39, Idaho Code, shall be eligible for property tax exemption not to exceed seven (7) years.

(2) "Remediated value" shall mean market value for assessment purposes of the land on January 1, less the market value for assessment purposes of the land on the January 1 prior to the year in which the remediation was completed.

(3) The exemption shall amount to fifty percent (50%) of the remediated land value. The exempted value assessed under this formula shall remain constant throughout the period of the exemption.

(4) The exemption allowed by this section may be granted only if:

(a) The covenant not to sue as provided in section 39-7207, Idaho Code, remains in full force and effect for the entire period of exemption;

(b) The site remains in the possession of the owner for the entire exemption period.

(5) The exemption allowed by this section may be rescinded if:

(a) The covenant not to sue as provided in section 39-7207, Idaho Code, is rescinded by the department;

(b) The site is transferred to a new owner.

(6) The owner need only make application for the exemption described in this section once over the course of the seven (7) year period.

(7) No owner of a site shall be granted the exemption provided in this section if said site has been:

(a) Previously granted the exemption provided in this section regardless of whether the entire seven (7) years of the exemption have been used;

(b) Denied by the department as a qualifying site pursuant to chapter 72, title 39, Idaho Code.

(8) The legislature declares this exemption to be necessary and just. [I.C., § 63-602BB, as added by 1997, ch. 117, § 21, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1-40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-602CC. Property exempt from taxation — Qualified equipment utilizing postconsumer waste or postindustrial waste. —

(1) The following property is exempt from taxation: qualified equipment utilizing postconsumer waste or postindustrial waste used to manufacture products. This exemption shall be granted only if the list of all taxable personal property as described in section 63-302, Idaho Code, is submitted by the property owner or the agent thereof to the assessor not later than March 15 of each year. Additionally, the requirements of subsection (3) of this section shall be met.

(2) As used in this section:

(a) "Postconsumer waste" or "postindustrial waste" means only those products and materials consisting of metals, paper, glass or plastic

generated by businesses or consumers which have served their intended end use or usefulness and either have been or would normally be disposed of as solid waste except for the fact that they are separated from solid waste for purposes of collection, recycling or reuse. "Postconsumer waste" or "postindustrial waste" shall not include radioactive waste, as defined in subsection (4)(g) of section 63-3029D, Idaho Code, or hazardous waste, as defined in chapter 44, title 39, Idaho Code.

(b) "Product" means any material resulting from a manufacturing process and offered for sale to the private or public sector which is composed of at least fifty percent (50%) postconsumer waste or postindustrial waste. "Product" does not include any shredded material unless such shredded material is incorporated directly into the manufacturing process.

(c) "Qualified equipment" means machinery or equipment located within Idaho which has at least an estimated three (3) years useful life and at least ninety percent (90%) of the total actual production from the equipment during the previous calendar year utilized postconsumer waste or postindustrial waste. "Qualified equipment" shall not include any machinery or equipment which is used for the collection, as defined herein, of postconsumer waste or postindustrial waste. As used in this section "collection" means:

(i) The acquisition of materials from businesses or the general public through purchase or donation, including the organization of systems for such acquisitions;

(ii) The preparation of materials for over-the-road transportation through cleaning, densification by shredding, baling, or any other method, or coalescence, including the organization of systems for such preparation; or

(iii) The transportation of postconsumer waste or postindustrial waste between separate geographical locations, including the movement of materials around the manufacturing site.

(3) On the list of taxable personal property required by subsection (1) of this section, the property owner, or agent thereof, shall identify all qualified equipment, and all machinery and equipment that does not meet the definitions of qualified equipment.

The property owner, or agent thereof, shall also report use of all qualified equipment, on forms prescribed by the state tax commission.

(4) The county assessor may request additional information of the company to verify the basis of the exemption claimed in this section.

(5) The legislature declares that this exemption is necessary and just. [I.C., § 63-602CC, as added by 1997, ch. 117, § 22, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1—40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-602DD. Manufactured homes used under a dealer's plate or as a sheep and cow camp. — The following property is exempt from taxation: Manufactured homes that are:

- (1) Manufactured homes eligible to be used under a dealer's license plate; or
- (2) Manufactured homes designated as sheep and cow camps. [I.C., § 63-602DD, as added by 2004, ch. 27, § 3, p. 43.]

STATUTORY NOTES

Prior Laws. — Former § 63-602DD, by 1998, ch. 38, § 1, p. 165), was repealed by which comprised (I.C., § 63-602DD, as added S.L. 2004, ch. 27, § 1.

63-602EE. Property exempt from taxation — Certain tangible personal property. — The following property is exempt from taxation: class 2 property that is agricultural machinery and equipment and exclusively used in agriculture during the immediately preceding tax year. For purposes of this section:

(1) "Agricultural machinery and equipment" shall mean any machinery and equipment that is used in:

- (a) Production of field crops including, but not limited to, grains, feed crops, fruits and vegetables or the production of or caring for nursery stock as defined in section 22-2302, Idaho Code; or
- (b) The grazing, feeding or raising of livestock, fur-bearing animals, fish, fowl and bees to be sold or used as part of a net profit-making agricultural enterprise or dairy.

(2) Buildings shall not be considered to be agricultural machinery and equipment. [I.C., § 63-602EE, as added by 2001, ch. 356, § 1, p. 1250; am. 2002, ch. 150, § 1, p. 440.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2001, ch. 356 declared an emergency retroactively to January 1, 2001. Approved April 9, 2001.

Section 2 of S.L. 2002, ch. 150 declared an emergency retroactively to January 1, 2002. Approved March 20, 2002.

63-602FF. Partial exemption for parcels of land in a rural home site development plat. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-602FF, as added by 2002, ch. 341, § 2, p. 958, was repealed by S.L. 2006, ch. 233, § 1. See § 63-602K.

Effective Dates. — Section 4 of S.L. 2006, ch. 233 declared an emergency retroactively to January 1, 2006 and approved March 30, 2006.

63-602GG. Property exempt from taxation — Low-income housing owned by nonprofit organizations. — (1) As provided in this section, low-income housing owned by nonprofit organizations shall be exempt from taxation.

(2) In order to qualify as a nonprofit organization under this section, an organization must demonstrate that:

(a) It is organized as a nonprofit corporation pursuant to chapter 3, title 30, Idaho Code, or pursuant to equivalent laws in the applicable state of incorporation; and

(b) It has received an exemption from taxation from the internal revenue service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(c) No proceeds or tax benefits of the organization or from the low-income housing property owned by the organization shall inure to any individual or for-profit entity other than normal employee compensation.

(3) In order to qualify for the exemption provided in this section, the low-income housing property shall meet the following qualifications:

(a) Both legal and equitable title to the property is solely owned by the nonprofit organization seeking the exemption and is managed by the owner or a related nonprofit organization qualifying for the exemption set forth in section 63-602C, Idaho Code; and

(b) Tenants shall not be evicted based upon their inability to pay for a period of three (3) months if such inability is due to a catastrophic event that is not under the tenant's control. For purposes of this subsection, "catastrophic event" means a medical condition or injury in which sudden, serious and unexpected symptoms of illness or injury are sufficiently severe to render the tenant unable to participate in employment and such illness or injury has been certified by one (1) or more licensed physicians and/or psychiatrists or psychologists. The term "catastrophic event" does not apply to individuals who voluntarily remove themselves from the workforce; and

(c) Except for a manager's unit, all of the housing units in the low-income housing property are dedicated to low-income housing in the following manner: Fifty-five percent (55%) of the units shall be rented to those earning sixty percent (60%) or less of the median income for the county in which the housing is located; twenty percent (20%) of the units shall be rented to those earning fifty percent (50%) or less of the median income of the county in which the housing is located; and twenty-five percent (25%) of the units shall be rented to those earning thirty percent (30%) or less of the median income for the county in which the housing is located.

(4) The exemption provided in this section shall not apply:

(a) If the project is financed after the effective date of this act and applicable law permits the payment of property taxes with federal or state funds, grants, loans or subsidies; or

(b) If the property is receiving federal project-based assistance, as provided by 42 U.S.C. sections 1437f(d)(2), 1437f(f)(6) and 1437f(o)(13); or

(c) To any property used by a taxpayer to qualify for tax credits under the provisions of 26 U.S.C. chapter 42 or any successor programs until such time as the property is solely owned by a nonprofit organization as defined in this section and is no longer utilized to receive federal tax credits.

(5) Notwithstanding any other provision of this section, a low-income housing property shall be exempt from taxation due to undue hardship if:

(a) The property was financed prior to the effective date of this act; and

(b) Such financing was dependent upon the tax-exempt status of the property; and

(c) The law does not allow additional federal or state revenues to be available for the payment of property taxes.

(6) Nothing in this section shall affect the qualification of properties for tax-exempt status under other provisions of title 63, Idaho Code. [I.C., § 63-602FF, as added by 2002, ch. 162, § 1, p. 481; am. and redesign. 2003, ch. 16, § 16, p. 48.]

STATUTORY NOTES

Federal References. — Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

Compiler's Notes. — This section was formerly compiled as § 63-602FF.

Effective Dates. — The “effective date of this act” is July 1, 2002, the effective date of S.L. 2002, ch. 162.

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

63-602HH. Property exempt from taxation — Significant capital investments. — (1) The net taxable value of all property of a taxpayer in excess of eight hundred million dollars (\$800,000,000) located within a single county in Idaho shall be exempt from property taxation and any special assessment.

(2) The property included in the calculation of the exemption set forth in this section shall include all real property owned, and all personal property owned, leased, or rented that would otherwise be subject to property tax; provided however, with respect to leased or rented personal property, only that portion of the property which a taxpayer is contractually liable for payment of property taxes thereon shall be included in the calculation of the exemption.

(3) Leased or rented personal property, included in the calculation of the exemption provided by this section shall not be assessable against the owner of such property.

(4) The exemption set forth in this section shall apply first to owned real and personal property and, if exhausted, shall then apply to leased or rented personal property.

(5) The taxpayer owning, leasing, or renting the property included in the calculation of the exemption shall designate the property to which the exemption applies.

(6) The exemption set forth in this section shall not be available to any taxpayer with respect to a given year who, in the immediately preceding calendar year, failed to make significant capital investments of at least twenty-five million dollars (\$25,000,000), by the acquisition or improvement of real or personal property located within the county referred to in subsection (1) of this section.

(7) The exemption set forth in this section shall not be available to any taxpayer with respect to a given year who, as of the first day of such year, did not employ or engage on a regular full-time basis, or the equivalent thereof, at least one thousand five hundred (1,500) workers within the county referred to in subsection (1) of this section.

(8) Except for the exemption provided for in subsection (4) of section 63-3029B, Idaho Code, no other exemption from property tax or any special assessment provided by the statutes of this state shall be applicable to any property described in subsection (2) of this section with respect to a year in which the exemption set forth in subsection (1) of this section applies to any of the same property.

(9) Property exempted under this section shall not be included on any new construction roll prepared by the county assessor in accordance with section 63-301A, Idaho Code.

(10) The state tax commission shall adopt all rules that may be necessary to implement this section. [I.C., § 63-602HH, as added by 2005, ch. 284, § 1, p. 922; am. 2006, ch. 59, § 1, p. 183.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 59, added present subsection (9) and redesignated former subsection (9) as present subsection (10).

Compiler's Notes. — Section 1 of S.L. 2005, ch. 279 also enacted a § 63-602HH, which has been designated by the compiler as § 63-602II.

Effective Dates. — Section 2 of S.L. 2005, ch. 284 declared an emergency retroactively to January 1, 2005 and approved April 5, 2005.

Section 4 of S.L. 2006, ch 59 declared an emergency retroactively to January 1, 2006 and approved March 14, 2006.

63-602II. Property exempt from taxation — Unused infrastructure. — (1) It is the intent of this section to preserve infrastructure and encourage economic development in the limited circumstances when a business or other commercial entity ceases to operate on property within a county.

(2) Following notice as prescribed in section 31-710, Idaho Code, and public hearings, the board of county commissioners of any county shall have the authority to exempt from taxation the unused infrastructure of a business, provided that the business states that such infrastructure is nonoperational under penalty of perjury.

(3) The exemption shall be for a period of up to five (5) years, provided that the board of county commissioners may vote to extend the exemption for a period not exceeding five (5) additional years.

(4) The board of county commissioners shall publish in its minutes any decision to grant or deny the exemption provided in this section and shall notify the county assessor and state tax commission of any exemption and the duration of such exemption. It shall be the responsibility of the assessor to return the property valuation of the unused infrastructure to the tax rolls upon the expiration of the exemption.

(5) The exemption provided in this section shall not be granted for any portion of an operating public utility.

(6) As used in this section, "unused infrastructure" means installed utilities including, but not limited to, rail, water, natural gas and electrical lines. [I.C., § 63-602HH, as added by 2005, ch. 279, § 1, p. 877; am. and redesign. 2006, ch. 16, § 25, p. 42.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 16, redesignated this section which was enacted as a second 63-602HH by S.L. 2005, ch. 279, § 1.

Compiler's Notes. — This section was

enacted as § 63-602HH by § 1 of S.L. 2005, ch. 279. Another § 63-602HH was enacted by § 1 of S.L. 2005, ch. 284. This section was permanently assigned as § 63-602II by § 25 of S.L. 2006, ch. 16.

63-602JJ. Property exempt from taxation — Certain operating property of producer of electricity by means of wind energy. — The following property is exempt from taxation: operating property of producers of electricity by means of wind energy exclusively used to produce electricity by means of wind energy on which the tax on gross wind energy earnings will be paid. [I.C., § 63-602JJ, as added by 2007, ch. 143, § 7, p. 415.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-603. Electric, or gas, public utilities pumping water for irrigation or drainage — Reduction of assessment in accordance with exemption — Credit on customers' bills or payment to consumers. —

(1) The state tax commission shall, at the time of assessment of the property of any electrical, or gas, public utility, cooperative organized under the rural electrification administration act of the United States congress, or other company distributing electrical power ("utility"), determine the amount of the exemption under section 63-602O, Idaho Code, and shall reduce such assessment so that any such utility shall not be required to pay any property taxes upon that portion of its property so exempted.

The amount of such exemption or reduction by the state tax commission shall be as nearly as practicable, such as would yield the amount of property taxes included in the rates of such utility under the tariff schedule(s) applicable to the furnishing of such electricity or gas.

(2) The full amount of property taxes which would have been due from such utility if such exemption had not been made, shall be credited or paid annually, for the year in which the exemption is made, on the electric or gas bill, to the consumer by the utility furnishing such electricity or gas for irrigation purposes.

(3) If the consumer is not a customer of the deliverer of electrical power or natural gas energy, the full amount of property taxes which would have been due from such utility if such exemption had not been made, shall be paid annually, for the year in which the exemption is made, directly to the consumer by the utility delivering such electricity or gas for irrigation purposes. To qualify for credit or direct payment the person or organization at the point of delivery must also be the person or organization pumping water for irrigation purposes and not a distributor or redistributor of electrical power or natural gas energy.

(4) For the purposes of determining the benefit to which each consumer is entitled by virtue of this exemption, the following procedure is provided.

To receive the benefit of the exemption under section 63-602O, Idaho Code, and this section, each consumer who is not a customer of the deliverer of electrical power or gas energy must file an application with the state tax commission on or before April 30 each year except that for the year 1993, only such application may be filed on or before June 15. The state tax commission shall prescribe by rule the form and information necessary for such application.

On or before the fifteenth day of November each year, the tax collector of each county shall transmit to the state tax commission, duplicate tax statements of each utility, showing the property taxes payable by such utility in his county. The state tax commission shall as soon as practicable thereafter, certify to each utility, the aggregate saving in property taxes effected in the several counties to each utility by reason of this exemption. On or before the fifteenth day of December of each year, each utility shall file with the state tax commission of Idaho, a statement showing the revenues which were or are to be collected from each irrigation or drainage pumping consumer, and the ratio between the aggregate savings in property taxes certified to it by the state tax commission and the aggregate revenues which were or are to be collected from these consumers. The utility shall determine the credit to which each consumer is entitled by virtue of this exemption and shall certify to the state tax commission that it has refunded or credited against the consumer's bills, the amounts due each consumer. This refund or credit shall equal each consumer's bill for the year multiplied by the ratio calculated pursuant to the provisions of this paragraph. The public utilities commission shall have jurisdiction under the public utilities law to insure utility compliance with the provisions of this statute. [I.C., § 63-603, as added by 1996, ch. 98, § 7, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutionality.

This section is not unconstitutional under Idaho Const., Art. 7, § 8, since Idaho Const., Art. 7, § 5, gives the legislature authority to provide for such exemption by statute. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

This section is not unconstitutional under Idaho Const., Art. 8, §§ 2 or 4, for it does not lend state aid and credit to private individuals in nature of a subsidy but is a valid

exemption under Const., Art. 7, §§ 5 and 8. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

This section exempting from taxation property of power companies used in developing or transmitting energy for pumping water for irrigation purposes is not void as fixing arbitrary, unreasonable and unjust classification. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

63-604. Land actively devoted to agriculture defined. — (1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

- (a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:
 - (i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

- (ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or
 - (iii) It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or
 - (iv) It is in a cropland retirement or rotation program.
- (b) The area of such land is five (5) contiguous acres or less and such land has been actively devoted to agriculture within the meaning of subsection (1)(a) of this section during the last three (3) growing seasons; and
- (i) It agriculturally produces for sale or home consumption the equivalent of fifteen percent (15%) or more of the owner's or lessee's annual gross income; or
 - (ii) It agriculturally produced gross revenues in the immediately preceding year of one thousand dollars (\$1,000) or more. When the area of land is five (5) contiguous acres or less, such land shall be presumed to be nonagricultural land until it is established that the requirements of this subsection have been met.
- (2) Land shall not be classified or valued as agricultural land which is part of a platted subdivision with stated restrictions prohibiting its use for agricultural purposes, whether within or without a city.
- (3) Land utilized for the grazing of a horse or other animals kept primarily for personal use or pleasure rather than as part of a bona fide for-profit enterprise shall not be considered to be land actively devoted to agriculture.
- (4) Land actively devoted to agriculture, having previously qualified for exemption under this section in the preceding year, or which would have qualified under this section during the current year, shall not lose such qualification due to the owner's or lessee's absence in the current year by reason of active military service in a designated combat zone, as defined in section 112 of the Internal Revenue Code. If an owner fails to timely apply for exemption as required in this section solely by reason of active duty in a designated combat zone, as defined in section 112 of the Internal Revenue Code, and the land would otherwise qualify for exemption under this section, then the board of county commissioners of the county in which the land actively devoted to agriculture is located shall refund property taxes, if previously paid, in an amount equal to the exemption which would otherwise have applied.
- (5) If the land qualified for exemption pursuant to section 63-602FF, Idaho Code, in 2005, then the land will qualify in 2006 for the exemption pursuant to section 63-602K, Idaho Code, upon the filing of a statement by the owner with the board of county commissioners that the land will be actively devoted to agriculture pursuant to this section in 2006.
- (6) For purposes of this section, the act of platting land actively devoted to agriculture does not, in and of itself, cause the land to lose its status as land being actively devoted to agriculture if the land otherwise qualifies for the exemption under this section.

(7) As used in this section:

(a) "Contiguous" means being in actual contact or touching along a boundary or at a point, except no area of land shall be considered not contiguous solely by reason of a roadway or other right-of-way.

(b) "For-profit" means the enterprise will, over some period of time, make or attempt to make a return of income exceeding expenses.

(c) "Platting" means the filing of the drawing, map or plan of a subdivision or a replatting of such, including certification, descriptions and approvals with the proper county or city official. [I.C., § 63-604, as added by 1996, ch. 98, § 7, p. 308; am. 2001, ch. 12, § 1, p. 13; am. 2002, ch. 93, § 1, p. 255; am. 2005, ch. 271, § 1, p. 835; am. 2006, ch. 233, § 2, p. 691.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 233, added present subsections (5), (6), and (7)(c) and redesignated former subsection (5) as (7).

Federal References. — Section 112 of the Internal Revenue Code, referred to in subsection (4), is codified as 26 U.S.C.S. § 112.

Compiler's Notes. — Section 63-602FF, referred to in subsection (5) was repealed by S.L. 2006, ch. 233, § 1. See § 63-602K.

Effective Dates. — Section 2 of S.L. 2001, ch. 12 declared an emergency retroactively to

January 1, 2001 and approved February 16, 2001.

Section 2 of S.L. 2002, ch. 93 declared an emergency retroactively to January 1, 2002. Approved March 19, 2002.

Section 2 of S.L. 2005, ch. 271 declared an emergency retroactively to January 1, 2005. Approved April 5, 2005.

Section 4 of S.L. 2006, ch. 233 declared an emergency retroactively to January 1, 2006 and approved March 30, 2006.

JUDICIAL DECISIONS

ANALYSIS

Agricultural use not shown.

Construction with other law.

Agricultural Use Not Shown.

Deputy county assessor found no evidence livestock was being grazed on the properties involved, nor was the rancher making regular rent payments or otherwise complying with the terms of his lease. The legislative intent behind the agricultural exemption was that "use" is a requirement and, therefore, the property owners were not entitled to the exemption with respect to use of the land for grazing purposes. *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 108 P.3d 349 (2005).

Construction with Other Law.

Former Idaho Admin. Code 35.01.165(04)(d) exceeded the authority granted by §§ 63-602K and this section making the regulation unenforceable, and the district court properly awarded the taxpayer an agricultural exemption, recovery of the taxes paid under protest, together with interest accrued. *Cnty. Action Agency, Inc. v. Bd. of Equalization*, 138 Idaho 82, 57 P.3d 793 (2002).

63-605. Land used to protect wildlife and wildlife habitat. —

(1) For the tax year commencing January 1, 2007, an application for appraisal, assessment and taxation under this section as land actively devoted to agriculture pursuant to section 63-604, Idaho Code, shall be filed in the office of the county assessor on or before the fourth Monday in June 2007. For the tax year commencing January 1, 2008, and for each and every year thereafter, an application for appraisal, assessment and taxation under this section as land actively devoted to agriculture pursuant to section 63-604, Idaho Code, shall be filed in the office of the county assessor between

January 1 and April 15 of each year for which the requested tax status is to apply. Land eligible for this tax status is land which is either:

(a) Owned and used for wildlife habitat by a private, nonprofit corporation which corporation has a recognized tax exempt status under section 501(c)(3) of the Internal Revenue Code, and which corporation qualifies for exemption status under section 63-602C, Idaho Code, and which corporation is dedicated to the conservation of wildlife or wildlife habitat; or

(b) Being managed pursuant to a conservation easement or a conservation agreement, as defined in this section and which easement or agreement has been entered into with a private, nonprofit corporation which has a tax exempt status under section 501(c)(3) of the Internal Revenue Code, which corporation qualifies for exemption status under section 63-602C, Idaho Code, and which land qualified, for three (3) consecutive years immediately preceding management of the land pursuant to a conservation easement or a conservation agreement, as land actively devoted to agriculture pursuant to section 63-604, Idaho Code.

(2) As used in this section, "conservation agreement" means a written document between a private, nonprofit corporation enumerated in subsection (1) of this section and the landowner which defines wildlife, flora or fauna or freshwater biota to be protected and outlines a minimum of a ten (10) year management plan to protect target species and to control noxious weeds in accordance with Idaho noxious weed law in chapter 24, title 22, Idaho Code. Progress in managing the target species and controlling noxious weeds shall be monitored and an annual progress report shall be submitted each year along with the application filed as required in this section.

(3) The conservation agreement or a copy of the document creating the conservation easement shall be filed with the county assessor by April 15 of the year for which application for the tax status is made. Following initial approval of an application in any tax year, for each subsequent, consecutive year in which application is made and the tax status is claimed, it shall not be necessary to resubmit the conservation agreement or a copy of the document creating the conservation easement unless the agreement or easement document has been amended. In the event the document is amended, the amended version shall be submitted with that year's application.

(4) Failure to file an application for each year that tax status under this section is claimed, or failure to annually document progress in managing the target species and controlling noxious weeds as required in subsection (2) of this section, shall result in loss of the tax status provided in this section. [I.C., § 63-605, as added by 1996, ch. 98, § 7, p. 308; am. 2000, ch. 215, § 1, p. 603; am. 2007, ch. 168, § 1, p. 496.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 168, rewrote the section to the extent that a detailed comparison is impracticable.

Federal References. — Section 501(c)(3), referred to in this section is codified as 26 U.S.C.S. § 501(c)(3).

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in

accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

Section 2 of S.L. 2007, ch. 168 declared an emergency retroactively to January 1, 2007 and approved March 23, 2007.

63-606. Equalization of aggregate values. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1913, ch. 58, § 75; reen. C.L. 133:75; C.S., § 3172; I.C.A., § 61-5078, was repealed by S.L. 1965, ch. 312, § 32, p. 849.

63-606A. Small employer growth incentive exemption. — (1) The county board of equalization of any county in which any property, the investment in which qualifies for the income tax credits described in sections 63-4403 and 63-4404, Idaho Code, is located may exempt all or a portion of the value of such property from property taxation. The board may grant the exemption when it finds that the investments in such property benefit the citizens within the county and taxing districts within the county in a manner and to such a degree that to grant the exemption is necessary and just.

(2) Property exempted under this section shall not be included on any new construction roll prepared by the county assessor in accordance with section 63-301A, Idaho Code.

(3) Applications for the exemption under this section shall be considered by the board as other applications for exemption under section 63-501, Idaho Code. Upon request of the board, the state tax commission may disclose to the board or county official designated by the board information necessary to identify and determine the property upon which the exemption may be granted. [I.C., § 63-606A, as added by 2005, ch. 370, § 2, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — Section 3 of S.L. 2005, ch. 370 provided "SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-607. Limitations. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1913, ch. 58, § 76; reen C.L.

133:76; C.S., § 3173; I.C.A., § 61-508, was repealed by S.L. 1965, ch. 312, § 32, p. 849.

63-608. [Reserved.]**63-609, 63-610. Criterion of value — Meetings. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised 1913, ch. 58, §§ 78, 79, p. 173; reen. C.L. 133:78, 133:79; C.S., §§ 3175, 3176; I.C.A., §§ 61-510, 61-511, concerning

criterion for value for equalization and meetings other than for equalization, were repealed by S.L. 1965, ch. 312, § 32, p. 849.

63-611 — 63-626. [Reserved.]**63-627, 63-628. Allocation of funds to county — State ad valorem and special state taxes. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised S.L. 1957, ch. 165, §§ 1, 2, p. 299, concerning duty in allocating funds to

any county upon the basis of equalized assessed valuations, were repealed by S.L. 1965, ch. 312, § 32, p. 849.

CHAPTER 7**PROPERTY TAX RELIEF****SECTION.**

- 63-701. Definitions.
- 63-701A. [Repealed.]
- 63-702. Claim is personal — Exceptions.
- 63-703. Procedure for filing claims.
- 63-704. Amount of property tax reduction.
- 63-705. Publication of changes in income limitations and property tax reduction amounts.
- 63-706. Time requirements for filing claim.
- 63-707. Procedure after claim approval.
- 63-708. Recovery of erroneous claims.
- 63-709. Reimbursement by state tax commission.
- 63-710. Procedure after reimbursement.
- 63-711. Cancellation of taxes — Hardship and casualty losses — Special.

SECTION.

- 63-712. Short title.
- 63-713. Definitions.
- 63-714. Application — Deferral of property tax.
- 63-715. Procedures — Appeals.
- 63-716. Deferral — Interest — Lien — Priority.
- 63-717. Reimbursement by state tax commission.
- 63-718. Events terminating deferral — Payment of deferred tax and interest.
- 63-719. Tax deed for deficiency in repayment.
- 63-720. Recovery of erroneous and other improper deferrals.
- 63-721. Knowingly filing a false claim a misdemeanor.

63-701. Definitions. — As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

- (a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead.

(3) "Household" means the claimant and the claimant's spouse. The term does not include bona fide lessees, tenants, or roomers and boarders on contract. "Household" includes persons described in subsection (8)(b) of this section.

(4) "Household income" means all income received by the claimant and, if married, all income received by the claimant's spouse, in a calendar year.

(5) "Income" means the sum of federal adjusted gross income as defined in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and to the extent not already included in federal adjusted gross income:

(a) Alimony;

(b) Support money;

(c) Nontaxable strike benefits;

(d) The nontaxable amount of any individual retirement account, pension or annuity, (including railroad retirement benefits, all payments received under the federal social security act except the social security death benefit as specified in this subsection, state unemployment insurance laws, and veterans disability pensions and compensation, excluding any return of principal paid by the recipient of an annuity and excluding rollovers as provided in section 402 or 403 of the Internal Revenue Code);

(e) Nontaxable interest received from the federal government or any of its instrumentalities or a state government or any of its instrumentalities;

(f) Worker's compensation; and

(g) The gross amount of loss of earnings insurance.

It does not include gifts from nongovernmental sources or inheritances. To the extent not reimbursed, the cost of medical care as defined in section 213(d) of the Internal Revenue Code, incurred or paid by the claimant and, if married, the claimant's spouse, may be deducted from income. To the extent not reimbursed, personal funeral expenses, including prepaid funeral expenses and premiums on funeral insurance, of the claimant and claimant's spouse only, may be deducted from income up to an annual maximum of five thousand dollars (\$5,000) per claim. "Income" does not include veterans disability pensions received by a person described in subsection (1)(e) who is a claimant or a claimant's spouse if the disability pension is received pursuant to a service-connected disability of a degree of forty percent (40%) or more. "Income" does not include dependency and indemnity compensation or death benefits paid to a person described in subsection (1) of this section by the United States department of veterans affairs and arising from a service-connected death or disability. "Income" does not include lump sum death benefits made by the social security administration pursuant to 42 U.S.C. section 402(i). Documentation of medical expenses may be required by the county assessor, board of equalization and state tax commission in such form as the county assessor, board of equalization or state tax commission shall determine. "Income" shall be that received in the calendar year immediately preceding the year in which a claim is filed. Where a claimant and/or the claimant's spouse does not file a federal tax return, the claimant's and/or the claimant's spouse's federal adjusted gross income, for purposes of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial

qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person held such title shall be attributed to the estate for the computation of any time periods under subsection (8)(a) or (8)(b) of this section.

(8)(a) "Primary dwelling place" means the claimant's dwelling place on January 1 or before April 15 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates to be his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 or before April 15 and:

- (i) At least six (6) months during the prior year; or
- (ii) The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or
- (iii) The majority of the time after the claimant first occupied the dwelling if occupied by the claimant for less than one (1) year. The county assessor may require written or other proof of the foregoing in such form as the county assessor may determine.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. Payment of utilities shall

not be payment of a consideration to occupy the dwelling. A claimant's spouse who resides in a care facility shall be deemed to reside at the claimant's primary dwelling place and to be a part of the claimant's household. A care facility is a hospital, nursing facility or intermediate care facility for the mentally retarded as defined in section 39-1301, Idaho Code, or a facility as defined in section 39-3302(14), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection and security. [I.C., § 63-701, as added by 1996, ch. 98, § 8, p. 362; am. 1997, ch. 24, § 1, p. 33; am. 1997, ch. 117, § 23, p. 323; am. 1998, ch. 352, § 1, p. 1108; am. 1999, ch. 40, § 1, p. 77; am. 1999, ch. 382, § 2, p. 1047; am. 2000, ch. 20, § 1, p. 38; am. 2000, ch. 109, § 1, p. 239; am. 2000, ch. 154, § 1, p. 389; am. 2000, ch. 274, § 149, p. 799; am. 2001, ch. 69, § 2, p. 129; am. 2001, ch. 325, § 1, p. 1140; am. 2004, ch. 156, § 2, p. 495; am. 2005, ch. 31, § 1, p. 143; am. 2005, ch. 241, § 1, p. 749; am. 2005, ch. 280, § 58, p. 880; am. 2006, ch. 350, § 2, p. 1065.]

STATUTORY NOTES

Amendments. — This section was amended by two 1997 acts — ch. 24, § 1, effective July 1, 1997 and ch. 117, § 24, effective January 1, 1997 — which do not appear to conflict and have been compiled together.

The 1997 amendment, by ch. 24, § 1, in subsection (5) at the end of the former first sentence substituted a comma for a period and at the beginning of the former second sentence substituted “nontaxable” for “Non-taxable” thereby combining the former first and second sentences into the present first sentence and in subsection (6) added “or (e)” following “subsection (1)(d)”.

The 1997 amendment, by ch. 117, § 23, in subsection (1) in the first sentence substituted “sections 63-701 through 63-710, Idaho Code” for “this chapter” following “under the provisions”, in the second sentence at the beginning added “Except as provided in section 63-702(2), Idaho Code, on” for “On”, and substituted “be an owner of” for “own” preceding “a homestead”; in subsection (3) added the last sentence; in subsection (5) added “and to the extent not already included in federal adjusted gross income,” following “section 63-3004, Idaho Code,”; in the present second sentence substituted “or inheritances.” for “, inheritances, or” and adding “To the extent not reimbursed, cost of” thereby creating the present second and third sentences and in the present third sentence added “may be deducted from income” at the end of the sentence; in subsection (8) at the end of the first sentence added “or who is a person entitled to file a claim under section 63-702, Idaho Code” and in the fifth sentence substituted “computed on the value of the claimant’s” for

“reduced to a proportion commensurate with the proportion of” preceding “partial ownership”; and in subdivision (9)(b) added the present second sentence.

This section was amended by two 1999 acts, ch. 40, § 1 and ch. 382, § 2, which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 40, in subdivision (1)(d), substituted “by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or” for “pursuant to 42 USC 423, 45 USC 228, 45 USC 231 or 5 USC 8337,” and in subsection (6), added “or who is over age sixty-five (65) and lives in the claimant’s dwelling and receives protective, oversight, caregiving or personal care services provided by the claimant” following “of this section.”

The 1999 amendment, by ch. 382, in subsection (8), in the present second sentence, inserted “or irrevocable” following “a revocable,” and inserted “or who is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation which holds title in fee simple or holds a certificate of motor vehicle title and who has retained or been granted a life estate”; and in subdivision (9)(b), in the last sentence, substituted “39-3302(16)” for “39-3302(15)” and inserted “(1)” following “one.”

This section was amended by four 2000 acts — ch. 20, § 1, effective January 1, 2000, ch. 109, § 1, effective January 1, 2000, ch. 154, § 1, effective January 1, 2000 and ch. 274,

§ 149, effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 20, § 1, in the second sentence in subsection (8), substituted “or who has retained” for “and who has retained”; and in the last sentence of subdivision (9)(b), deleted “(1)” following “one”.

The 2000 amendment, by ch. 109, § 1 added the present seventh sentence in subsection (8).

The 2000 amendment, by ch. 154, § 1 added the present fifth sentence in subsection (5).

The 2000 amendment, by ch. 274, § 149, in subsection (6), substituted “personal assistance services” for “personal care services” in two places; in the last sentence of subdivision (9)(b), substituted “nursing facility or intermediate care facility” for “skilled nursing facility, intermediate care facility or intermediate care facility”, and deleted “(1)” following “one”.

This section was amended by three 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 31, § 1, substituted the ending beginning with “claimant first filed” for “claim was filed a claimant must be an owner of a homestead and be” in the introductory language of subsection (1) and made a stylistic change.

The 2005 amendment, by ch. 241, § 1, substituted “department of veterans affairs” for “veterans administration” in subsection (1)(e) and added the fifth sentence following subsection (5)(g).

The 2005 amendment, by ch. 280, § 58, substituted “section 39-3302(14)” for “section 39-3302(16)” in subsection (8)(b).

The 2006 amendment, by ch. 350, in the introductory paragraph of subsection (1), inserted “an application under section 63-602G,

Idaho Code, and has filed”; in subsection (5)(d), inserted “any return of principal paid by the recipient of an annuity and excluding”; and in the first sentence of the last paragraph of subsection (5), deleted “capital gains” preceding “gifts from nongovernmental sources.”

Federal References. — Section 402 and 403 of the Internal Revenue Code, referred to in subsection (5)(d), are recodified as 26 U.S.C.S. §§ 402 and 403.

Section 213(d) of the Internal Revenue Code, referred to in subsection (5)(g), is recodified as 26 U.S.C.S. § 213(d).

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1999, ch. 34 declared an emergency retroactively to January 1, 1998 and approved March 8, 1999.

Section 2 of S.L. 2000, ch. 20 declared an emergency retroactively to January 1, 2000 and approved March 1, 2000.

Section 2 of S.L. 2000, ch. 109 declared an emergency retroactively to January 1, 2000 and approved March 30, 2000.

Section 2 of S.L. 2000, ch. 154 declared an emergency retroactively to January 1, 2000 and approved April 3, 2000.

Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

Section 2 of S.L. 2005, ch. 241 declared an emergency retroactively to January 1, 2005 and approved April 1, 2005.

Section 3 of S.L. 2006, ch. 350 declared an emergency retroactively to January 1, 2006 and approved April 7, 2006.

63-701A. Operating property of pipe lines for transportation of commodities assessable by tax commission. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-701A, as added by 1951,

ch. 116, § 1, p. 270, was repealed by S.L. 1965, ch. 312, § 32.

63-702. Claim is personal — Exceptions. — (1) The right to file a claim under the provisions of sections 63-701 through 63-710, Idaho Code, shall be personal to the claimant and shall not survive his death except as otherwise provided in this section. A property tax reduction shall be allowed pursuant to the provisions of sections 63-701 and 63-710, Idaho Code, if the owner occupies the residential improvements after January 1 but before April 15, and if no other property tax reductions have been claimed. Such

right may be exercised on behalf of a living claimant by an agent authorized in writing to so act, by a guardian or other representative acting pursuant to judicial authority or by any person or entity described in section 63-711(3), Idaho Code. If a claimant dies after having filed a timely claim, the amount thereof shall be allowed to his personal representative, if one is appointed, or to surviving heirs or to the trust or other entity owning the property, as appropriate.

(2) In the case of property owned by an estate, revocable trust, irrevocable trust, limited partnership, limited liability company or corporation, where the deceased person's widow or widower succeeds to the interest of the deceased person in that entity and occupies the dwelling as required in this chapter, the deceased owner's widow or widower, or any person or entity described in section 63-711(3), Idaho Code, on behalf of that widow or widower:

(a) May file a claim on behalf of the deceased spouse if the deceased spouse qualified or would have qualified as a claimant on January 1 or before April 15 of the year in which the claim is filed; or

(b) The widow or widower shall be deemed the owner of the property in any year after the year of the death of the spouse. [I.C., § 63-702, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 24, p. 298; am. 2001, ch. 166, § 2, p. 576; am. 2001, ch. 69, § 3, p. 129; am. 2004, ch. 156, § 3, p. 495.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that the §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 9 of S.L. 2001, ch. 69 provided that

the act should take effect on and after January 1, 2002.

Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

63-703. Procedure for filing claims. — (1) Any claim filed shall be signed by the claimant or by any person or entity described in section 63-711(3), Idaho Code. By signing such claim, the claimant or other person or entity signing such claim shall attest to the truth of such claim, and shall be subject to the penalties provided by section 18-5401, Idaho Code, for stating as true any material fact known to be false. All claims shall be made on forms prescribed by the state tax commission and shall be in triplicate. One (1) copy of the form shall be provided to the claimant or the person or entity acting on behalf of the claimant, one (1) copy shall be kept for all county purposes, and one (1) copy shall be forwarded to the state tax commission with the property tax reduction roll. Except as provided in section 63-707, Idaho Code, the claim and its documentation shall not be deemed to be public records and may not be used for any commercial purpose; provided however, the state tax commission and the county assessor may use the contents of such claims and documentation for general statistical analysis and may publish such analysis, or any part of such analysis, as appropriate.

(2) By filing a claim, a claimant does not relinquish any right he or any member of his household may have to apply for a cancellation of property taxes pursuant to section 63-711, Idaho Code. The county commissioners may grant any such claimant, or any member of his household, a cancellation of property taxes, late charges and interest under such section, if a claim has been filed under the provisions of sections 63-701 through 63-710, Idaho Code.

(3) If two (2) or more individuals of a household are able to meet the qualifications of a claimant, they may decide between themselves who may obtain a reduction in property taxes under the provisions of sections 63-701 through 63-710, Idaho Code, and shall certify such division in writing to the county assessor in such form as the county assessor shall require, but if they do not decide between themselves, then the reduction shall be divided equally among or between the claimants in the household or shall be divided as determined under section 63-701(7), Idaho Code, whichever is appropriate.

(4) When an "owner" is any person who is the beneficiary of a revocable or irrevocable trust, or is a partner of a limited partnership, or member of a limited liability company, or shareholder of a corporation, if such entity holds title in fee simple or holds a certificate of motor vehicle title, and if said person holds at least a five percent (5%) ownership in such entity, he or she, or any person or entity described in section 63-711(3), Idaho Code, may provide proof of the foregoing as follows:

(a) If the owner of the homestead is a revocable or irrevocable trust, by an affidavit stating:

(i) That the claimant or the claimant's spouse, is a beneficiary of the trust; and

(ii) That the claimant, or the claimant's spouse, is the occupier of the residential property and uses the property as the primary dwelling place of the occupier as of January 1 or before April 15.

The affidavit shall include the attaching of copies of those portions of the trust which set forth the status of the claimant or the claimant's spouse as beneficiary and which contain the signature page or pages of the trust.

(b) If the owner is a limited partnership, limited liability company, or corporation, by an affidavit stating the entity holds title in fee simple or holds a certificate of motor vehicle title, and if said person holds at least a five percent (5%) ownership in such entity. The affidavit shall include the attaching of:

(i) Proof of the current status of the entity owning the property, including statements from the secretary of state as to such status if appropriate;

(ii) Copies of any documents, or portions thereof, relating to the entity including, but not limited to, those portions of the articles of organization or operating agreements of the entity indicating the person's membership or ownership in the entity and the membership or ownership percentage held by such person; and

(iii) Copies of any contracts or other agreements between the entity and the claimant or the claimant's spouse including, but not limited to, any

portions thereof that show the right of occupancy of the homestead by the person.

(c) Any other documentation which the county assessor determines would aid the county assessor in carrying out the provisions of this chapter. [I.C., § 63-703, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 25, p. 298; am. 2001, ch. 69, § 4, p. 129; am. 2004, ch. 156, § 4, p. 495.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

63-704. Amount of property tax reduction. — (1) Each claimant qualifying for and applying for a reduction in property taxes under the provisions of sections 63-701 through 63-710, Idaho Code, shall be allowed a reduction in property taxes on his homestead for the current year only, in the amounts provided by subsection (4) of this section.

(2) All property taxes continue to be the responsibility of the individual taxpayer, and all property taxes continue to be perpetual liens against the property against which assessed, and all property taxes may be collected and enforced in the usual manner, if the taxpayer does not receive any property tax reduction as provided under sections 63-701 through 63-710, Idaho Code, or if the taxpayer receives less property tax reduction than the whole amount of property taxes he is charged with.

(3) The claimant property owner's property tax reduction shall be based upon the current year's assessed value and the current year's levy.

(4) Property tax reductions qualified under sections 63-701 through 63-710, Idaho Code, shall be allowed as set out in section 2, chapter 59, laws of 1992, and adjusted for cost-of-living fluctuations as provided in section 63-705, Idaho Code. [I.C., § 63-704, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 26, p. 298; am. 2001, ch. 69, § 5, p. 129.]

STATUTORY NOTES

Cross References. — Homestead defined, § 63-701.

Compiler's Notes. — Section 2, chapter 59, laws of 1992, referred to in subsection (4), amended former § 63-120 and was repealed

by S.L. 1996, ch. 98, § 1.

Effective Dates. — Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

63-705. Publication of changes in income limitations and property tax reduction amounts. — (1) The state tax commission shall publish adjustments to the income limitations, which shall be the greater of: (a) an individual's income as defined in section 63-701, Idaho Code, of not more than twenty-eight thousand dollars (\$28,000) per household for tax year 2006, and each tax year thereafter; or (b) one hundred eighty-five percent (185%) of the federal poverty guidelines for a household of two (2) for tax year 2006, and each tax year thereafter. The lowest limitation shall allow a maximum reduction of one thousand three hundred twenty dollars (\$1,320) in tax year 2006 and thereafter, or actual property taxes, whichever

is less. Each income limitation and reduction amount shall be prorated based on the basic maximum reduction, in practicable increments so that the highest income limitation will provide for a reduction of one hundred fifty dollars (\$150), or actual property taxes, whichever is less.

(2) The tax commission shall publish the adjustments required by this section each and every year the secretary of health and human services announces said cost-of-living modification. The adjustments shall be published no later than October 1 of each such year and shall be effective for claims filed in and for the following property tax year.

(3) The publication of adjustments under this section shall be exempt from the provisions of chapter 52, title 67, Idaho Code, but shall be provided to each county and to members of the public upon request and without charge. [I.C., § 63-705, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 27, p. 298; am. 1998, ch. 102, § 2, p. 350; am. 2006, ch. 350, § 1, p. 1065.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 350, in subsection (1), in the first sentence, substituted the language beginning “which shall be the greater of” for “and property tax reduction amounts to reflect cost-of-living fluctuations”; deleted the former second sentence, which read: “The adjustments shall effect changes in each income limitation by a percentage equal as near as practicable to the annual cost-of-living percentage modification as determined by the secretary of health and

human services pursuant to 42 USC 415(i)”; and in the second sentence, substituted “one thousand three hundred twenty dollars (\$1,320) in tax year 2006 and thereafter” for “one thousand one hundred dollars (\$1,100) in tax year 1998, and one thousand two hundred dollars (\$1,200) in tax year 1999.”

Effective Dates. — Section 3 of S.L. 2006, ch. 350 declared an emergency retroactively to January 1, 2006 and approved April 7, 2006.

63-706. Time requirements for filing claim. — (1) Any claim for property tax reduction to be granted under the provisions of sections 63-701 through 63-710, Idaho Code, shall be filed in the office of the county assessor between January 1 and April 15 of each year. The county assessor shall examine each claim and determine whether it is in conformity with section 63-701, Idaho Code, and shall accordingly approve, modify or disapprove the claim in total at the time the application is received. Additionally, the county assessor shall notify the claimant, or the person or entity acting on behalf of the claimant, in writing by May 1 if his claim has been modified or has been disapproved. The notice of modification or disapproval shall declare that the claimant, or the person or entity acting on behalf of the claimant, may appeal the assessor’s decision to the county board of equalization, and shall state the time and place that the county board of equalization shall meet for such purposes.

(2) All claims filed with the county assessor shall be completed by him and forwarded to the county commissioners, which shall convene as a board of equalization, any other provision of law notwithstanding, on or before May 15, and shall approve all claims approved by the county assessor, and shall approve the action of the county assessor in modifying or disapproving all other claims unless an appeal has been filed with the board of equalization prior to May 15. In considering any appeal of the assessor’s decision in

modifying or disapproving a claim, the board of equalization may affirm the assessor's decision, may modify the assessor's decision, or may reject the assessor's decision and proceed to approve all or any part of the claim as submitted to the assessor originally.

(3) No informality on the part of the board of equalization shall invalidate any action of the board. The decision of the board of equalization shall be final, except that within thirty (30) days the claimant, or any person or entity acting on behalf of the claimant, may appeal to the district court on matters of law, and may appeal the decision of the board of equalization when the board has acted arbitrarily. The claimant, or the person or entity acting on behalf of the claimant, shall be notified immediately, in writing, of the board of equalization's action on his appeal to it. [I.C., § 63-706, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 28, p. 298; am. 2001, ch. 69, § 6, p. 129.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

63-707. Procedure after claim approval. — (1) Immediately after claims have been approved by the board of equalization, the county assessor shall prepare a property tax reduction roll, which shall be in addition to the property roll, the subsequent property roll and missed property rolls which property tax reduction roll shall show:

- (a) The name of the taxpayer;
- (b) The description of the property for which a reduction in property taxes is claimed, suitably detailed to meet the requirements of the individual county;
- (c) The assessor's best estimate of current market value, and any pro-rated net taxable value of the eligible portion of the property's current market value for assessment purposes; and
- (d) The amount of tax reduction for which the applicant is eligible as determined by the income of the claimant and, if married, the claimant's spouse, pursuant to sections 63-704 and 63-705, Idaho Code.

(2) As soon as possible, but in any event by no later than the fourth Monday of June, the property tax reduction roll shall be certified to the county auditor and to the state tax commission in the manner prescribed by rules promulgated by the state tax commission. The property tax reduction roll shall be accompanied by a copy of the claim forms for disapproved claims, when requested by the state tax commission and a copy of the approved claims form.

(3)(a) As soon as possible, but in any event by no later than the fourth Monday of October, the county auditor shall complete the property tax reduction roll by adding the following information:

- (i) The current year's levy for the code area in which the property is situated;

(ii) The amount of property tax reduction claimed based on the current year's market value for assessment purposes and the current year's levy; and

(iii) The current year's market value for assessment purposes.

(b) As soon as possible, but in any event no later than the fourth Monday of October, the county auditor shall certify the completed property tax reduction roll to the state tax commission in the manner prescribed by rules promulgated by the state tax commission.

(4) The state tax commission shall determine the total number of claims to be allowed in each county, the dollar amount of each claim allowed, and the total dollar amount for all claims for each county. These amounts shall be certified to the county auditor and tax collector by the state tax commission by no later than the third Monday in November.

(5) The state tax commission may audit each and every claim submitted to it, and, any other provision of law notwithstanding, may utilize income tax returns filed by the claimant or by the claimant's spouse to determine the income of the claimant or the claimant's spouse.

(6) If it is determined by the state tax commission that a claim is erroneous, the tax commission shall disapprove so much of the claim as necessary in order to conform with statutory standards. The tax commission shall provide the claimant, or the person or entity acting on behalf of the claimant, written notice of the tax commission's intent to disapprove all or a portion of the claim. The claimant, or the person or entity acting on behalf of the claimant, shall have fourteen (14) days to make written protest to the tax commission of the intended action. The claimant, or the person or entity acting on behalf of the claimant, may submit additional information and may request an informal hearing with the commission. If the claimant, or the person or entity acting on behalf of the claimant, fails to make written protest within fourteen (14) days, the tax commission shall provide written notice of disapproval to the claimant, or the person or entity acting on behalf of the claimant, by the fourth Monday of October and to the county auditor of the county from which the claim was received. Any claimant, or person or entity acting on behalf of the claimant, whose claim is disapproved in whole or in part by the state tax commission may:

(a) File a claim with the county commissioners for a special cancellation pursuant to section 63-711, Idaho Code;

(b) Appeal such disapproval by the state tax commission to the board of tax appeals or to the district court of the county of residence of the taxpayer within thirty (30) days. [I.C., § 63-707, as added by 1996, ch. 98, § 8, p. 308; am. 2001, ch. 69, § 7, p. 129; am. 2004, ch. 156, § 5, p. 495.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

63-708. Recovery of erroneous claims. — Within three (3) years of payment, the state tax commission may recover any erroneous or incorrect

payment made under sections 63-701 through 63-710, Idaho Code, from any “claimant” as defined in section 63-701(1), Idaho Code. The deficiency determination, collection, and enforcement procedures provided by the Idaho income tax act, sections 63-3039, 63-3042, 63-3043 through 63-3064, Idaho Code, shall apply and be available to the commission for enforcement and collection under sections 63-701 through 63-710, Idaho Code, and such sections shall, for this purpose, be considered part of sections 63-701 through 63-710, Idaho Code. Wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under sections 63-701 through 63-710, Idaho Code, be described as tax relief liens and proceedings. In connection with such sections, a deficiency shall consist of any amount erroneously claimed by or paid to a claimant under sections 63-701 through 63-710, Idaho Code. [I.C., § 63-708, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 29, p. 298.]

63-709. Reimbursement by state tax commission. — By no later than December 20 of each year the state tax commission shall pay to the county tax collector of each county one-half (1/2) of the amount due each county as reimbursement for reduction in property taxes as provided in sections 63-701 through 63-710, Idaho Code, as shown on the abstract of property tax reduction roll and claims forms approved by the state tax commission, and shall pay the second one-half (1/2) of such amount by not later than June 20 of the following year. [I.C., § 63-709, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 30, p. 298; am. 2004, ch. 156, § 6, p. 495.]

STATUTORY NOTES

Effective Dates. — * Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1,

1997. Approved March 15, 1997.

Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

63-710. Procedure after reimbursement. — The money received by the county tax collector under the provisions of section 63-709, Idaho Code, may be considered by the counties and other taxing districts and budgeted against at the same time, in the same manner and in the same year as revenues from taxation. [I.C., § 63-710, as added by 1996, ch. 98, § 8, p. 308; am. 2004, ch. 156, § 7, p. 495; am. 2006, ch. 59, § 2, p. 183.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 59, deleted former subsection (1) which read: “Upon receipt of the notice of percentage reduction from the state tax commission, the county auditor shall immediately notify the county commissioners, and the commissioners may take this reduction into consideration in making its property tax levies, and the county commissioners are authorized, but not

required, to increase any levy to the extent necessary to compensate for the percentage reduction”, and deleted the subsection (2) designation from the remaining provisions of the section.

Effective Dates. — Section 8 of S.L. 2004, ch. 156 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

Section 4 of S.L. 2006, ch 59 declared an

emergency retroactively to January 1, 2006
and approved March 14, 2006.

63-711. Cancellation of taxes — Hardship and casualty losses — Special. — (1) Property taxes may be canceled for reason of undue hardship. The commissioners may, at their discretion, grant such cancellation for a specified time period. The commissioners may, at their discretion, cancel taxes on property which has been damaged by an event causing casualty loss to all or a portion of the property when the event occurs after the fourth Monday of June or casualty losses for which the amount of loss cannot be determined until after the fourth Monday of June.

(2) Applicants seeking a cancellation pursuant to this section must apply to the county commissioners. Each applicant shall give a sworn statement containing full and complete information of his financial status to the county commissioners and shall make true answers to all questions put before him touching such person's right to the cancellation. The county commissioners shall decide and determine from each examination and from each written application for said cancellation whether or not such person is entitled to the cancellation claimed or any part thereof accordingly. In applying for a cancellation pursuant to this section, an applicant may submit an application at any time and the county commissioners may grant such application, either in whole or in part, at any regular meeting and the burden of proving the right of such cancellation shall rest upon the applicant.

(3) The county commissioners may, for good cause shown, allow an agent or some person or entity acting for and on behalf of the applicant to make the application for the cancellation provided in this section for any applicant, or where a person is entitled to cancellation shall be mentally incompetent or physically unable to make such sworn statement, his or her spouse, widow, widower, guardian, power of attorney, or personal representative, or other person having knowledge of the facts, may make the application for the cancellation.

(4) Any time within thirty (30) days after mailing of a decision of the county commissioners, or pronouncement of a decision announced at a meeting, or the failure of the county commissioners to act, an appeal may be taken to the district court for the county in which the property is located. Such appeal may only be filed by the property owner or by any person aggrieved, or by a person or entity acting on behalf of such person, when he deems any such action illegal or prejudicial to the public interest. Nothing in this section shall be construed so as to suspend the payment of property taxes pending said appeal.

Notice of such appeal stating the grounds thereafter shall be filed with the county auditor, who shall forthwith transmit a copy of said notice to the county commissioners.

(5) The county commissioners shall order all necessary adjustments to be made in the property tax records of the various county officers and taxing districts.

(6) The cancellation of property taxes which have become delinquent shall affect only those property taxes granted a cancellation by order of the

county commissioners and all interest and late charges on such taxes. [I.C., § 63-711, as added by 1996, ch. 98, § 8, p. 308; am. 1997, ch. 117, § 31, p. 298; am. 1998, ch. 102, § 3, p. 350; am. 2001, ch. 69, § 8, p. 129.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

Section 9 of S.L. 2001, ch. 69 provided that the act should take effect on and after January 1, 2002.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Exemptions Strictly Construed.

Statutes purporting to grant exemptions from general taxation should generally be

strictly construed as exemptions are never presumed. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

63-712. Short title. — The provisions of sections 63-712 through 63-721, Idaho Code, shall be known and may be cited as the "Property Tax Deferral Act." [I.C., § 63-712, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, ch. 234 declared an emergency retroactively

to January 1, 2006 and approved March 30, 2006.

63-713. Definitions. — In addition to the definitions in section 63-701, Idaho Code, the following definitions apply to sections 63-712 through 63-721, Idaho Code.

(1) "Qualified claimant" means an individual who is a claimant who applies for and properly receives property tax relief under the provisions of sections 63-701 through 63-710, Idaho Code.

(2) "Qualified property" means property for which:

- (a) A qualified claimant is eligible to receive benefits under the provisions of sections 63-701 through 63-710, Idaho Code, for the year for which the qualified claimant applies for a deferral of payment of property tax; and
- (b) Is owned only by the qualified claimant and his or her spouse and is not subject to a trust or life estate or other ownership held by a person who is not the qualified claimant or his or her spouse. [I.C., § 63-713, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, ch. 234 declared an emergency retroactively

to January 1, 2006 and approved March 30, 2006.

63-714. Application — Deferral of property tax. — (1) A qualified claimant may elect, upon the application for property tax relief filed under section 63-703, Idaho Code, to defer payment of any property tax due after application of all benefits available under section 63-704, Idaho Code. The state tax commission shall prescribe the form and manner by which the election must be made and may require that the application include information establishing the outstanding balance of any encumbrances, proof of insurance of an amount adequate for the amount of deferred tax and interest, and such other information as the state tax commission reasonably determines to be necessary. The state tax commission may require written or other proof of the encumbrances or casualty insurance in such form as the state tax commission may determine.

(2) No application for deferral of property taxes shall be granted if:

(a) The application fails to show sufficient equity in that property after consideration of encumbrances that are superior to any liens for deferral to secure the payment of all existing deferrals granted in the property; or

(b) The application fails to show proof of insurance of an amount adequate for the amount of the deferred tax and interest; or

(c) The result would be to defer property taxes which, together with the amount of property tax and interest previously deferred on the same property, would exceed fifty percent (50%) of the qualified claimant's proportional share of the market value of the qualified property. [I.C., § 63-714, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-715. Procedures — Appeals. — Elections for deferral of payment of property tax shall be subject to the provisions of section 63-706, Idaho Code, and if approved by the county board of equalization, shall be included on the property tax reduction roll and processed and reviewed as provided in section 63-707, Idaho Code, for claims for property tax relief. [I.C., § 63-715, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-716. Deferral — Interest — Lien — Priority. — (1) Upon approval by both the county board of equalization and the state tax commission, payment of any amount of property tax due for the year to which the election relates, after application of the property tax relief available under sections 63-701 through 63-710, Idaho Code, and subject to the limitation in section 63-717(2), Idaho Code, in regard to the qualified property subject to the election, shall be deferred until the deferral is terminated under section 63-718, Idaho Code.

(2) During the period of deferral, interest shall accrue on the amount deferred at the annual rate of six percent (6%) annually.

(3) The lien imposed by section 63-206, Idaho Code, shall continue to be a lien on the property in the amount of deferred taxes and interest thereon. The state tax commission shall file with the county recorder of the county in which the property is located a notice of lien for deferred property taxes. Notwithstanding the provisions of section 63-206, Idaho Code, the lien for deferred taxes and interest shall not be a first and prior lien, but shall take its priority from the date and time of filing of the notice of lien. [I.C., § 63-716, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-717. Reimbursement by state tax commission. — (1) By no later than December 20 of each year, the state tax commission shall pay to the county tax collector of each county one-half (1/2) of the amount due each county as reimbursement for property taxes deferred as provided in sections 63-712 through 63-721, Idaho Code, as shown on the property tax reduction roll required under section 63-707, Idaho Code, as modified by actions of the state tax commission relating to claims approved or disapproved by the state tax commission, and shall pay the second one-half (1/2) of such amount by not later than June 20 of the following year. The payments may be combined with payments made under section 63-709, Idaho Code.

(2) The total amount of reimbursement payable to all counties under this section shall not exceed five hundred thousand dollars (\$500,000) in regard to property taxes for one (1) calendar year. In the event that the amount of taxes approved for deferral exceeds five hundred thousand dollars (\$500,000), the amount of taxes deferred for each qualifying property shall be reduced proportionately and the balance of property tax not deferred shall be entered on the property tax notice required by section 63-902, Idaho Code, and shall be payable as required by chapter 9, title 63, Idaho Code. [I.C., § 63-717, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-718. Events terminating deferral — Payment of deferred tax and interest. — (1) A deferral of property tax payments shall terminate on the earlier of:

- (a) Voluntary payment of the full amount of deferred tax and interest to the state tax commission;
- (b) The death of the qualified claimant. In the case of more than one (1) qualified claimant, the death of the last surviving qualified claimant;

(c) A sale or other transfer of title to the property or any part of the property except a transfer of title to a surviving spouse of a deceased qualified claimant;

(d) The property no longer qualifies for the exemption provided in section 63-602G, Idaho Code, for residential improvements;

(e) A determination by the state tax commission under section 63-720, Idaho Code, that the deferral of property tax payments was erroneously granted to a person who is not a qualified claimant or in regard to property that is not qualified property.

(2) When a deferral of property tax is terminated any unpaid amount of deferred tax and interest shall be paid to the state tax commission no later than one hundred eighty (180) days after the termination.

(3) Any payments of deferred property tax received by the state tax commission under this section or under sections 63-719 and 63-720, Idaho Code, shall be distributed to the property tax deferral recovery fund which is hereby created. Amounts in the property tax deferral recovery fund are hereby continuously appropriated for the purposes of section 63-3638(5), Idaho Code. [I.C., § 63-718, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-719. Tax deed for deficiency in repayment. — Any amount of deferred tax due under section 63-718, Idaho Code, which is not paid to the state tax commission on the due date, is a delinquency subject to the provisions of chapter 10, title 63, Idaho Code, except that references to county and county officials in that chapter shall be taken as references to the state tax commission. [I.C., § 63-719, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-720. Recovery of erroneous and other improper deferrals. —

(1) In addition to the provisions of section 63-719, Idaho Code, the state tax commission may recover deferrals of tax payments made under sections 63-712 through 63-721, Idaho Code, from any person who elected the deferral under section 63-714, Idaho Code, if the commission determines that:

(a) A deferral was granted to a person who is not a qualified claimant or in regard to property that is not qualified property, or

(b) The owner of the property subject to the deferral possesses insufficient equity in that property, after consideration of encumbrances that are superior to any liens for deferral, to secure the payment of all existing deferrals granted in the property.

(2) The deficiency determination, collection, and enforcement procedures provided by the Idaho income tax act, sections 63-3039, 63-3042, 63-3043

through 63-3064, Idaho Code, shall apply and be available to the commission for enforcement and collection under sections 63-712 through 63-721, Idaho Code, and such sections shall, for this purpose, be considered part of sections 63-712 through 63-721, Idaho Code. Wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under sections 63-712 through 63-721, Idaho Code, be described as tax deferral liens and proceedings. In connection with such sections, a deficiency shall consist of any amount subject to recovery under this section together with any interest and penalty due thereon. [I.C., § 63-720, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

63-721. Knowingly filing a false claim a misdemeanor. — Every person who applies for deferral of taxes under section 63-714, Idaho Code, knowing that the person for whom the application is made is not a qualified claimant or knowing that the property is not qualified property, is guilty of a misdemeanor and on conviction thereof shall be punished as provided for misdemeanors in section 18-303, Idaho Code. [I.C., § 63-721, as added by 2006, ch. 234, § 1, p. 694.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2006, to January 1, 2006 and approved March 30, ch. 234 declared an emergency retroactively 2006.

CHAPTER 8

LEVY AND APPORTIONMENT OF TAXES

SECTION.

- 63-801. Annual state property tax levy.
- 63-802. Limitation on budget requests —
Limitation on tax charges —
Exceptions.
- 63-802A. Notice of budget hearing.
- 63-802B. [Reserved.]
- 63-802C. Election to create a new taxing district.
- 63-803. Certification of budgets in dollars.
- 63-804. Filing copy of budget.
- 63-805. Annual levies.
- 63-806. Warrant redemption fund.

SECTION.

- 63-807. Levy by new taxing units — Duties of auditor.
- 63-808. Record of proceedings.
- 63-809. Unauthorized levy — Notification by state tax commission — Action to set aside.
- 63-810. Erroneous Levy — Corrective action.
- 63-811. Computation of property taxes —
Duty of county auditor.
- 63-812. Accounting and collection of property taxes.
- 63-813. [Repealed.]

63-801. Annual state property tax levy. — (1) The county commissioners in each county in this state must meet on the second Monday of September in each year to ascertain the tax rate necessary to be levied on each dollar of the valuation of all the taxable property in the county for such year in order to raise the amount of state taxes apportioned to such county

by the state tax commission. The total of all levies must be within the limits prescribed by the laws of this state.

(2) In any period during which a sales tax is in force in this state, there shall be no levy of the general state property tax permitted by section 9, article VII, of the constitution of the state of Idaho. [I.C., § 63-801, as added by 1996, ch. 98, § 9, p. 308.]

STATUTORY NOTES

Cross References. — Counties authorized to levy and collect taxes, § 31-604. County commissioners authorized to equalize assessment, § 31-812. County commissioners authorized to levy taxes, § 31-811.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeal.

County levy authorized.

County's liability for uncollected state tax.

Determination of assessment roll.

"Levy" construed.

Lien of tax.

Means to pay indebtedness.

Warrant redemption fund.

Appeal.

Under former statute an appeal could be taken from order of the board making a tax levy. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911).

County Levy Authorized.

It is within power of legislature to pass an act authorizing board of commissioners of any county indebted to the state on account of state taxes due from such county to state to make a sufficient levy not exceeding a maximum rate therein specified for purpose of paying and liquidating such indebtedness. *Gooding v. Profitt*, 11 Idaho 380, 83 P. 230 (1905); *Gooding v. Cowen*, 11 Idaho 392, 83 P. 234 (1905); *Gooding v. Anderson*, 11 Idaho 392, 83 P. 234 (1905).

County's Liability for Uncollected State Tax.

A county was not liable to the state for uncollected state tax levied upon lands which, in default of payment, were sold at delinquent tax sale and bid in by the county, until such lands were redeemed or otherwise disposed of by the county. *State v. Ada County*, 7 Idaho 261, 62 P. 457 (1900).

Determination of Assessment Roll.

Where county board of equalization reduced assessor's assessment of cattle in county by 10% on July 13, but state tax

commission on second Monday in August reinstated prior assessment of assessor, and county officers by order of board of county commissioners on September 14 refused to accept assessment ordered by state tax commission, the latter was entitled to writ of mandamus compelling county officers and county board of equalization to obey order of state tax commission though petition was not filed until December 3, since final determination of true assessment roll rests with state tax commission. *State Tax Comm'n v. Johnson*, 75 Idaho 105, 269 P.2d 1080 (1954).

"Levy" Construed.

Word "levy" is sometimes used to denote mere ministerial act of computing and extending a tax according to an assessment and at other times it refers to legislative function of determining amount of money to be raised by taxation. *Northern P.R.R. v. Chapman*, 29 Idaho 294, 158 P. 560 (1916).

Lien of Tax.

Taxes on migratory livestock, when properly extended on real property assessment roll, become lien on real property of owner. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).

Lien of county and city taxes is same as that of state taxes and they are of same priority. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Means to Pay Indebtedness.

There being no constitutional prohibition against the legislature's providing a means whereby warrant indebtedness of counties may be extinguished by the issuance and sale of funding bonds, the legislative act governs. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

Warrant Redemption Fund.

Warrant redemption fund of the county may not be used to pay necessary and ordinary expenses of county government. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 704-724.

63-802. Limitation on budget requests — Limitation on tax charges — Exceptions. — (1) Except as provided in subsection (3) of this section for tax year 1995, and each year thereafter, no taxing district shall certify a budget request for an amount of property tax revenues to finance an annual budget that exceeds the greater of:

- (a) The dollar amount of property taxes certified for its annual budget for any one (1) of the three (3) tax years preceding the current tax year, whichever is greater, which amount may be increased by a growth factor of not to exceed three percent (3%) plus the amount of revenue that would have been generated by applying the levy of the previous year, not including any levy described in subsection (4) of this section, or any school district levy reduction resulting from a distribution of state funds pursuant to section 63-3638(10), Idaho Code, to any increase in market value subject to taxation resulting from new construction or change of land use classification as evidenced by the value shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code; and by the value of annexation during the previous calendar year, as certified by the state tax commission for market values of operating property of public utilities and by the county assessor; or
- (b) The dollar amount of property taxes certified for its annual budget during the last year in which a levy was made; or
- (c) The dollar amount of the actual budget request, if the taxing district is newly created except as may be provided in subsection (1)(h) of this section; or
- (d) In the case of school districts, the restriction imposed in section 33-802, Idaho Code; or
- (e) In the case of a nonschool district for which less than the maximum allowable increase in the dollar amount of property taxes is certified for annual budget purposes in any one (1) year, such a district may, in any following year, recover the foregone increase by certifying, in addition to any increase otherwise allowed, an amount not to exceed one hundred percent (100%) of the increase originally foregone. Said additional amount shall be included in future calculations for increases as allowed; or
- (f) In the case of cities, if the immediately preceding year's levy subject to the limitation provided by this section, is less than 0.004, the city may increase its budget by an amount not to exceed the difference between 0.004 and actual prior year's levy multiplied by the prior year's market

value for assessment purposes. The additional amount must be approved by sixty percent (60%) of the voters voting on the question at an election called for that purpose and held on the date in May or November provided by law, and may be included in the annual budget of the city for purposes of this section; or

(g) A taxing district may submit to the electors within the district the question of whether the budget from property tax revenues may be increased beyond the amount authorized in this section, but not beyond the levy authorized by statute. The additional amount must be approved by sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) or more of the voters voting on the question at an election called for that purpose and held on the May or November dates provided by section 34-106, Idaho Code. If approved by the required minimum sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the voters voting at the election, the new budget amount shall be the base budget for the purposes of this section; or

(h) When a nonschool district consolidates with another nonschool district or dissolves and a new district performing similar governmental functions as the dissolved district forms with the same boundaries within three (3) years, the maximum amount of a budget of the district from property tax revenues shall not be greater than the sum of the amounts that would have been authorized by this section for the district itself or for the districts that were consolidated or dissolved and incorporated into a new district; or

(i) In the instance or case of cooperative service agencies, the restrictions imposed in sections 33-315 through 33-318, Idaho Code.

(2) In the case of fire districts, during the year immediately following the election of a public utility or public utilities to consent to be provided fire protection pursuant to section 31-1425, Idaho Code, the maximum amount of property tax revenues permitted in subsection (1) of this section may be increased by an amount equal to the current year's taxable value of the consenting public utility or public utilities multiplied by that portion of the prior year's levy subject to the limitation provided by subsection (1) of this section.

(3) No board of county commissioners shall set a levy, nor shall the state tax commission approve a levy for annual budget purposes which exceeds the limitation imposed in subsection (1) of this section, unless authority to exceed such limitation has been approved by a majority of the taxing district's electors voting on the question at an election called for that purpose and held pursuant to section 34-106, Idaho Code, provided however, that such voter approval shall be for a period of not to exceed two (2) years.

(4) The amount of property tax revenues to finance an annual budget does not include revenues from nonproperty tax sources, and does not include revenue from levies that are voter approved for bonds, override levies or supplemental levies, plant facilities reserve fund levies, school emergency fund levies or for levies applicable to newly annexed property or for levies applicable to new construction as evidenced by the value of property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax year. [I.C., § 63-802, as added by 1996, ch. 98,

§ 9, p. 308; am. 1997, ch. 97, § 1, p. 227; am. 1997, ch. 117, § 32, p. 298; am. 1998, ch. 407, § 1, p. 1263; am. 1999, ch. 260, § 1, p. 665; am. 1999, ch. 381, § 1, p. 1045; am. 2000, ch. 444, § 1, p. 1407; am. 2005, ch. 178, § 1, p. 549; am. 2006, ch. 318, § 39, p. 990; am. 2007, ch. 144, § 2, p. 419.]

STATUTORY NOTES

Amendments. — This section was amended by two 1997 acts — ch. 97, § 1, effective January 1, 1998 and ch. 117, § 32, effective January 1, 1997 — which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 97, § 1 in subdivision (1)(a) added “state tax commission for market values of operating property of public utilities and by the” preceding “county assessor” at the end of the subdivision.

The 1997 amendment, by ch. 117, § 32 in subsection (1) added “for an amount of property tax revenues” following “a budget request”, deleted “the ad valorem portion of its” following “to finance”, and added “an” preceding “annual budget”; in subdivision (1)(a) substituted “property” for “ad valorem” following “The dollar amount of”, substituted “described in subsection (3) of this section” for “for voter approved bonds, override levies, supplemental levies, plant facilities reserve fund levies or school emergency fund levies” following “not including any levy”, added “or change of land use classification” following “resulting from new construction”, substituted “shown on the new construction roll compiled pursuant to section 63-301A, Idaho Code:” for “of either: (i) property subject to the occupancy tax pursuant to section 63-317, Idaho Code, for the preceding tax years; or (ii) new construction based upon a quantitative formula approved by the state tax commission which uses the value of building permits for the preceding year” and added “or” following “county assessor;”; in subdivision (1)(b) and in subdivision (1)(e) substituted “property” for “ad valorem” preceding “taxes”; in subsection (3) substituted “property” for “ad valorem” preceding “tax revenues to finance”, substituted “nonproperty” for “non ad valorem” preceding “sources”, added “, plant facilities reserve fund levies, school emergency fund levies” following “supplemental levies” and

deleted “and does not include plant facility reserve fund levies or school emergency fund levies” following “preceding tax year” at the end of the subdivision.

This section was amended by two 1999 acts, ch. 260, § 1 and ch. 381, § 1, which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 260, added subdivision (1)(g) (now subdivision (1)(h)).

The 1999 amendment, by ch. 381, added subdivision (1)(g).

The 2006 amendment, by ch. 318, updated the section reference in subsection (2).

The 2007 amendment, by ch. 144, inserted “or any school district levy reduction resulting from a distribution of state funds pursuant to section 63-3638(10), Idaho Code” near the middle of subsection (1)(a).

Effective Dates. — Section 2 of S.L. 1997, ch. 97 provided that the act should be in full force and effect on and after January 1, 1998.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1998, ch. 407 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 26, 1998.

Section 2 of S.L. 1999, ch. 260 declared an emergency retroactively to January 1, 1999 and approved March 24, 1999.

Section 2 of S.L. 1999, ch. 381 declared an emergency. Approved March 26, 1999.

Section 2 of S.L. 2000, ch. 444, declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 3 of S.L. 2005, ch. 178 declared an emergency retroactively to January 1, 2005. Approved March 28, 2005.

Section 3 of S.L. 2007, ch. 144 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-802A. Notice of budget hearing. — (1) Not later than April 30 of each year, each taxing district shall set and notify the county clerk of the date and location set for the budget hearing of the district. If no budget hearing is required by law, the county clerk shall be so notified.

(2) Beginning in 2003, a taxing district that fails to comply with subsection (1) of this section shall be prohibited from including in its budget any

budget increase otherwise permitted by either subsection (1)(a) or (1)(e) of section 63-802, Idaho Code.

(3) If a taxing district wishes to change the time and location of such budget hearing as stated on the assessment notice, it shall publish such change of time and location in advance of such hearing as provided by law. [I.C., § 63-802A, as added by 1999, ch. 36, § 1, p. 73; am. 2000, ch. 265, § 1, p. 742; am. 2006 (1st E.S.), ch. 1, § 16.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, substituted “taxing district” for “nonschool district” in Subsection (2), deleted former Subsection (3), which read: “Beginning in 2003, a school district that fails to comply with subsection (1) of this section shall be prohibited, in the year of such failure, from increasing the portion of its property tax budget raised under section 33-802 2., Idaho

Code, over the amount of the immediately preceding year”, and redesignated former Subsection (4) as present Subsection (3).

Compiler’s Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may be known and cited as the ‘Property Tax Relief Act of 2006’.”

Effective Dates. — Section 2 of S.L. 1999, ch. 36 declared an emergency retroactive to January 1, 1999 and approved March 3, 1999.

63-802B. [Reserved.]

63-802C. Election to create a new taxing district. — In the case of an election to create a new taxing district, the county clerk, of the county or counties where the proposed taxing district is proposed to be located, shall mail a notice of the election to all residences within the proposed taxing district or to residents in the proposed taxing district who are eligible to vote in this election. The notice shall be mailed not less than fourteen (14) calendar days prior to the day of the election and shall state with specificity: the purpose of the election, the date of the election, the polling places, the time the polls will be open, the aggregate amount of taxes that will be raised in the proposed taxing district if the election is successful and the increase that will occur per one hundred thousand dollars (\$100,000) of taxable value of property, above any exemptions, of residential property, commercial property, industrial property, land actively devoted to agriculture and operating property. The county clerk may bill the proposed taxing district for reimbursement of costs of administering this section. Compliance with this section shall satisfy any notice or publication requirement as may be provided by law. [I.C., § 63-802C, as added by 2007, ch. 364, § 1, p. 1097.]

STATUTORY NOTES

Effective Dates. — S.L. 2007, ch. 364, became effective July 1, 2007, without the signature of the governor.

63-803. Certification of budgets in dollars. — (1) Whenever any taxing district is required by law to certify to any county treasurer, county auditor, county assessor, county commissioners or to any other county officer, any property tax levy, upon property located within said district, such certification shall, notwithstanding any other provision of the law

applicable to any such district, be made at the time and in the manner hereinafter provided.

(2) The county auditor shall inform each of the taxing districts within his county of the taxable value of that district as soon as such value is known to the auditor, whether the value comes from the appraisal and assessment of real and personal property, or from allocation of the taxable value of operating property, or from other sources.

(3) Using the taxable value of the district, the council, trustees, board or other governing body of any taxing district shall certify the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved. The amount of money so determined shall be certified in dollars to the appropriate county commissioners. Any taxing unit, except regional airport authorities, located in more than one (1) county shall divide its dollar budget for certification to the separate counties by multiplying the amount of such budget by a fraction, the numerator of which shall be the total taxable value of all property in such taxing unit within the county to which such certification is to be made, and the denominator of which shall be the total taxable value of property in such taxing unit in all such counties. Budget certification to the participating counties of regional airport authorities shall be made in the manner prescribed in section 21-807(10), Idaho Code. Taxable value shall be certified by the county auditor of each affected county to such taxing unit and such certification shall be used in this formula. Except as provided in section 33-805, Idaho Code, relating to school emergency fund levies, the certification to the county commissioners required in this section shall be made not later than the Thursday prior to the second Monday in September, unless, upon application therefor, the county commissioners grant an extension of not more than seven (7) working days. After receipt of this certification, the county commissioners shall make a tax levy as a percent of taxable value of all property in the taxing district, which when applied to the tax rolls, will meet the budget requirements certified by such taxing districts.

(4) For the purpose of this section, "taxable value" shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy. When the county auditor is notified of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. For each taxing district, taxable value shall include the value from the property and operating property rolls for the current year and subsequent and missed property rolls for the prior year or the best estimate of the subsequent and missed property rolls for the current year. [I.C., § 63-803, as added by 1996, ch. 98, § 9, p. 308; am. 2002, ch. 118, § 1, p. 333; am. 2002, ch. 143, § 7, p. 394; am. 2003, ch. 8, § 4, p. 14.]

STATUTORY NOTES

Amendments. — This section was amended by two 2002 acts — chapter 118, § 1 and chapter 143, § 7, both effective July 1, 2002 — which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 118, § 1, in the next-to-last sentence in subdivision (3)

inserted “Thursday prior to the” and substituted “not more than seven (7) working days” for “not more than one (1) week.”

The 2002 amendment, by ch. 143, § 7 added the next-to-last sentence in subdivision (4).

63-804. Filing copy of budget. — The council, trustees, board or other governing body of any taxing district shall at the time of certifying the total amount required from a property tax upon property within the district to raise the amount of money fixed by their budget as previously prepared or approved and as provided for in section 63-803, Idaho Code, file with the appropriate county commissioners a certified copy of their budget as previously prepared, approved and adopted. [I.C., § 63-804, as added by 1996, ch. 98, § 9, p. 308.]

63-805. Annual levies. — (1) The county commissioners of each county in this state may levy annually upon all taxable property of said county, a property tax for general county purposes, to be collected and paid into the county treasury and apportioned to the county current expense fund which levy shall not exceed twenty-six hundredths percent (.26%) of market value for assessment purposes of such property, or a levy sufficient to raise two hundred fifty thousand dollars (\$250,000), whichever is greater. If a county establishes the justice fund, as provided in section 31-4602, Idaho Code, the maximum current expense levy shall be reduced to twenty hundredths percent (.20%) of market value for assessment purposes, or a levy sufficient to raise two hundred fifty thousand dollars (\$250,000), whichever is greater.

(2) The county commissioners of each county in this state may levy upon all taxable property of said county, a property tax for the purposes set forth in the statutes authorizing a county justice fund, to be collected and paid into the county treasury and apportioned to the county justice fund, if one has been established. Said levy shall not exceed twenty hundredths percent (.20%) of market value for assessment purposes of such property, or a levy sufficient to raise two hundred fifty thousand dollars (\$250,000), whichever is greater.

The county commissioners shall have the right to make a “general reserve appropriation,” said appropriation not to exceed five percent (5%) of the county justice fund budget as finally adopted. The total levy, however, for the county justice fund, including the “general reserve appropriation,” shall be within the limitations imposed by chapter 8, title 63, Idaho Code, or by any statutes of the state of Idaho in force and effect.

(3) Annually, before the second Monday in September, the board of trustees of any school district within the county having determined the number, if any, of pupils in average daily attendance above the number included in the last annual report thereof, and the amount of money required to provide the educational support programs and transportation support programs for such additional pupils in average daily attendance, as

defined in chapter 10, title 33, Idaho Code, the county commissioners shall determine the total of such new requirements within the county and upon the taxable property situate within the district requesting the same, and the county commissioners shall levy a tax sufficient to provide such amount, provided in no case shall the levy be more than six-hundredths percent (.06%) of the taxable value of the property to be collected and paid to the requesting district.

(4)(a) The county commissioners of each county in this state may levy annually upon all taxable property of its county, a property tax for the acquisition, maintenance and operation of public parks or public recreational facilities, to be collected and paid into the county treasury and apportioned to a fund to be designated as the “parks and recreation fund,” which is hereby created, and such county commissioners may appropriate otherwise unappropriated funds for such purposes. No levy made under this subsection shall exceed one-hundredth percent (.01%) of the market value for assessment purposes on all taxable property within the district.

(b) Any funds unexpended from the “parks and recreation fund,” or any funds unexpended from the current year’s certified parks and recreation budget may be retained in, or deposited to, the “parks and recreation fund” for the purpose of future land acquisition, park expansion or improvement, or the acquisition of operating equipment. The maximum accumulation of funds allowable shall not exceed twice the amount of money provided by the levy authorized in paragraph (a) of this subsection.

(5) Upon the same property and for the same year the county commissioners must also levy such other property taxes as may be necessary for the payment of the interest on county bonds or to provide a sinking fund for the redemption of county bonds or such other authorized taxes as may be necessary for any other or special purposes, to be collected and paid into the county treasury and apportioned as provided by the laws of this state. [I.C., § 63-805, as added by 1996, ch. 98, § 9, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Application.
- Conflict of statutes.
- Constitutionality.
- County school emergency fund.
- Funding bonds.
- Levy for school purposes.
- Levy to redeem warrants not double taxation.
- Purpose of section.
- Taxes.
- Levy.
- Property subject to.
- Taxes collected within highway district.
- Tax levied for roads.

Application.

The county school emergency fund is to be raised by a tax levied upon all taxable prop-

erty of the county or by a tax levied upon the taxable property of the school district or districts which request the levy to be made.

Board of Trustees v. Board of Comm'rs, 83 Idaho 172, 359 P.2d 635 (1961).

Conflict of Statutes.

In case of conflict between statutes relating to annual county tax levy for warrant redemption fund and subsequent statutes authorizing counties to issue bonds funding their warrant indebtedness existing as of second Monday in January, 1933, subsequent statutes control. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Constitutionality.

Statutes authorizing counties to issue bonds funding their warrant indebtedness existing as of second Monday in January, 1933, did not violate constitutional provision requiring legislature to provide system of county finance. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

County School Emergency Fund.

The county school emergency fund is to be raised by a tax levied upon all taxable property of the county, or by a tax levied upon the taxable property of the school district or districts which request the levy to be made. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

Funding Bonds.

Bonds funding county warrant indebtedness existing as of second Monday in January, 1933, were "general obligations" of county, for payment of which unlimited tax levy could be made. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Levy for School Purposes.

Unanimous vote of electors of common school district at annual meeting fixing total budget for maintenance of school during the ensuing year was a substantial compliance with the statute requiring a vote upon levy of special tax for schools before certification by trustees to county commissioners. *Copenhaver v. Common Sch. Dist. No. 17*, 56 Idaho 182, 52 P.2d 129 (1935).

Levy to Redeem Warrants Not Double Taxation.

Levy to redeem warrants, part of which were issued between second Monday in January, 1931, and second Monday in April, 1931, was not invalid as involving duplicate taxation as to amounts required to pay warrants issued between such dates, because general budget levy covered warrants issued subsequent to second Monday in January, when levies were applied to all property alike. *Oregon S.L.R.R. v. Washington County*, 54 Idaho 171, 30 P.2d 198 (1934).

Purpose of Section.

In the county school emergency fund statutes the levy provided is authorized in order

to provide funds with which to defray unanticipated expense of educational and transportation programs brought about by reason of increase in pupil attendance. It is in the nature of an emergency measure to procure funds with which to provide, among other things, teachers, classroom facilities and transportation for new classroom units, the number of which could not be determined until pupil enrollment took place at the commencement of the next term. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

Taxes.

—Levy.

The levy for the county school emergency fund is a county tax levied equally and uniformly upon all the taxable property in the county. The taxpayers are not assessed as members of a school district but as citizens of the county. The proceeds of the tax levy are apportioned in varying amounts and because some districts receive less than the amount of levy therein does not constitute lack of uniformity where the tax is apportioned reasonably and according to the need in an effort to equalize education or standards throughout the county. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

The statute authorizing the levying of a tax sufficient to provide a county equalization program, not in excess of thirty-five per cent of the state minimum educational program, does not require that the performance of the preliminary steps by the county commissioners and county superintendent of schools be made a matter of record, and if the underlying facts justifying such steps exist, their existence is controlling. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941).

—Property Subject to.

The provisions of the statute authorizing the levy for county school emergency fund is explicit in directing that the levy be made upon all taxable property of the county and since the requested levy must be county wide, it does not lack uniformity of taxation within the defendant county. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

Taxes Collected Within Highway District.

Retention of money collected from property within highway district under warrant redemption levy and used by county in redemption of outstanding unpaid county road and bridge warrants does not amount to double taxation. *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

Highway district was not entitled to appor-

tionment, under § 40-1633 (since repealed), of seventy-five per cent of taxes collected by county from property within highway district under levy for redemption of outstanding unpaid county road and bridge warrants. *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

Tax Levied for Roads.

The boards of county commissioners are required to levy a general property tax annu-

ally on the assessed valuation of all the taxable property in their respective counties for the maintenance and improvement of the established public roads and highways; the tax so levied is to be collected and paid into the county treasury and apportioned as provided by law. *Potlatch Lumber Co. v. Board of County Comm'rs*, 29 Idaho 399, 160 P. 256 (1916).

63-806. Warrant redemption fund. — (1) Upon the same property and for the same year the county commissioners shall levy a property tax for the redemption of outstanding county warrants issued prior to the first day of October in said year, to be collected and paid into the county treasury and apportioned to the county warrant redemption fund, which levy shall be sufficient for the redemption of all the outstanding county warrants, unless the amount of outstanding warrants exceeds the amount that would be raised by a levy of two-tenths of one percent (.2%) of the market value for assessment purposes on all taxable property in the county, in which case the county commissioners shall annually levy a property tax of two-tenths of one percent (.2%) of the market value for assessment purposes on all taxable property in the county for the redemption of such outstanding warrants.

(2) All property taxes levied in any year for the county current expense fund, county road fund and county bridge fund and collected on or after the first day of January in the succeeding year and any property tax levied for any purpose and which is no longer needed for such purpose when collected must be paid into the county treasury and apportioned to the county warrant redemption fund, except as otherwise provided by law. All money in the county treasury on the first day of October to the credit of the county current expense fund, county road fund, county bridge fund or any other fund which is no longer needed must be transferred to the county warrant redemption fund upon the books of the county auditor and county treasurer by resolution of the county commissioners entered upon the records of the proceedings. [I.C., § 63-806, as added by 1996, ch. 98, § 9, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Bonding.
Cash basis.
Conflict of statutes.
Constitutionality.
Construction.
Double taxation.
Power of county commissioners.
Redemption of warrants.
Uncollected state taxes.
Warrant redemption fund.

Bonding.

By this section, power of board of county commissioners to issue bonds for payment or redemption of outstanding county warrants is abrogated. This applies to warrants which were issued before said law went into effect as well as to warrants which were issued after it went into effect. *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914).

Session Laws 1915, ch. 20, p. 71, superseded this section and *Peavy v. McCombs* (1914), 26 Idaho 143, 140 P. 965 in the formation of new counties. Warrant indebtedness may be extinguished by issuance and sale of funding bonds in new counties. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

Cash Basis.

By this provision, legislature declared its purpose to place counties of the state upon a cash basis. *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914).

Conflict of Statutes.

In case of conflict between statutes relating to annual county tax levy for warrant redemption fund and subsequent statutes authorizing counties to issue bonds funding their warrant indebtedness existing as of second Monday in January, 1933, subsequent statutes control. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Constitutionality.

This section was passed in obedience to the mandate of Const., Art. 7, § 15. *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914).

Construction.

This section contemplates that only money not needed for purposes for which it was collected is to be transferred to warrant redemption fund by resolution of board of county commissioners. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Duty of ascertaining what money in treasury at end of fiscal year, or thereafter collected out of levy of preceding year, is needed

is committed to discretion of board of county commissioners. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Double Taxation.

The retention of money collected from the property within the highway district under the warrant redemption levy and used by the county in the redemption of outstanding unpaid county road and bridge warrants did not amount to double taxation, in that it was not a duplicate taxation of property for the same purpose for the same year. *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

Power of County Commissioners.

Board of county commissioners has no power to levy tax for purpose of establishing warrant redemption fund, unless there are unpaid county warrants issued prior to second Monday of April in year in which levy is made. *Oregon S.L.R.R. v. Gooding County*, 33 Idaho 452, 196 P. 196 (1921).

Redemption of Warrants.

Levy to redeem warrants, part of which were issued between the second Monday in January and the second Monday in April, same year, was not invalid as involving duplicate taxation as to the amounts required to pay the warrants issued between such dates, because it applied to all property alike. *Oregon S.L.R.R. v. Washington County*, 54 Idaho 171, 30 P.2d 198 (1934).

Uncollected State Taxes.

A county is not liable to the state for uncollected state taxes levied upon lands, which, in default of payment, are sold at delinquent sale, and bid in by the county, until such lands are redeemed or otherwise disposed of by the county. *State v. Ada County*, 7 Idaho 261, 62 P. 457 (1900).

Warrant Redemption Fund.

Warrant redemption fund of the county may not be used to pay necessary and ordinary expenses of county government. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

63-807. Levy by new taxing units — Duties of auditor. — Except as otherwise provided by law, no taxing district formed or organized after the first day of January, in any year, shall be authorized to make a levy for that calendar year, nor shall the auditor of any county in which the taxing district may be situated be required to extend any levy on behalf of the taxing district upon the county rolls extended by him for the year. No existing taxing district which shall annex any territory after the first day of January of the current year, shall be authorized to levy a property tax for the year upon the property situated in the annexed territory and the property shall in all respects be taxed as if the annexation had not taken place. However, should any existing school district or school districts divide,

consolidate or reorganize after the assessment date in any year, the board of trustees of the divided, consolidated or reorganized school district shall have the power to levy property taxes and certify the levy for the year in the same manner and according to the same boundaries which the separate school districts involved in the division, consolidation or reorganization could have levied property taxes had the division, consolidation or reorganization not taken place. [I.C., § 63-807, as added by 1996, ch. 98, § 9, p. 308.]

63-808. Record of proceedings. — (1) The clerk of the board must keep a record of all proceedings of the county commissioners relating to the levy of property taxes in the minutes and all levies authorized and fixed by the county commissioners must be recorded in said minutes. Except as otherwise provided in subsection (2) of this section, the clerk must, on or before the third Monday of September in each year, prepare four (4) certified copies of the record of all levies authorized and fixed by the county commissioners, and deliver one (1) of such copies to the assessor, and one (1) of such copies to the tax collector, and one (1) of such copies to the state tax commission, who must each file the same in his or their office, and the clerk must file the other copy in his office as county auditor.

(2) When the county commissioners grant an extension for the certification required in section 63-803(3), Idaho Code, the clerk must prepare the certified copies specified in subsection (1) of this section on or before the fourth Monday of September. [I.C., § 63-808, as added by 1996, ch. 98, § 9, p. 308.]

63-809. Unauthorized levy — Notification by state tax commission — Action to set aside. — (1) The state tax commission shall carefully examine the statements furnished to it, as provided in section 63-808, Idaho Code. On or before the fourth Monday in October, the state tax commission shall notify the county commissioners of each county of the approval of all previously certified levies. The state tax commission shall also notify the county commissioners of each county and the governing authorities of any city, school district, or any other taxing district or municipality no later than the fourth Monday of October if it appears that the county commissioners or governing authorities have fixed a levy or certified a property tax budget increase that exceeds any limitation provided by law.

(2) If it appears that the county commissioners of any county have fixed a levy for any purpose or purposes not authorized by law, or in excess of the maximum provided by law for any purpose or purposes, the state tax commission shall thereupon notify the attorney general, and if it appears that the governing authorities of any city, school district, or any other district or municipality to which is delegated by law the authority to levy property taxes, have fixed a levy for any purpose or purposes not authorized by law or in excess of the maximum provided by law for any purpose or purposes, the commission shall on or before the fourth Monday in October notify the board of county commissioners, county treasurer and county attorney of the county in which it appears that such unauthorized or excess levy has or levies have been fixed.

(3) The attorney general or the county attorney so notified shall immediately bring suit in a court of proper jurisdiction against the county commissioners or governing authorities of any city, school district or other district or municipality levying such unauthorized or excess levy to set aside such levy as being illegal.

(4) Any necessary expenses incurred by the attorney general or the county attorney in the prosecution of such action shall be borne by the county in which the suit was brought. [I.C., § 63-809, as added by 1996, ch. 98, § 9, p. 308; am. 2000, ch. 433, § 1, p. 1390.]

63-810. Erroneous Levy — Corrective action. — (1) Whenever the county commissioners have discovered that a levy has been made by unintentional clerical, mathematical or electronic error, in any levy certified by such board, the county commissioners on its own motion may:

(a) If discovered prior to the fourth Monday of November of the year for which the levy is certified, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits.

(b) If discovered after the fourth Monday of November of the year for which the levy is certified, but before January 30 of the succeeding year, order all necessary corrections made in all property tax records, if the corrected levy is otherwise within statutory limits. The corrected levy shall be applied to the taxable value within each taxing district and the property taxes so applied shall be a perpetual lien on the property, and such property tax levy and tax charge shall supersede all previous incorrect levies and charges made for that year, except that the property tax computed using the corrected levy shall allow a credit for the amount of property taxes previously paid. If additional property tax is owed due to the corrected levy, the county tax collector shall, prior to the fourth Monday in May, mail to the last record owner of any property affected by such erroneous levy a notice of tax correction. The deadline for paying such property tax shall be no later than June 20 of that year. Late charges and interest will be added if full property tax is not paid by June 20 and interest will be calculated from January 1 as provided in section 63-1001, Idaho Code.

(c) The levy correction shall be considered at a hearing held by the county commissioners at which time any taxpayer may appear and be heard upon the issue. Notice of the date, time, place and purpose of such hearing shall be published in a newspaper published in the county, or if there is none, then in a newspaper of general circulation in the county. The notice shall be run once each week for the two (2) weeks preceding the hearing. The hearing shall be held not less than seven (7) days after the first notice is published.

(2) The county commissioners shall submit the corrected levy and a copy of the order to the state tax commission. The state tax commission shall review the corrected levy and take action as required in section 63-809, Idaho Code.

(3) For the purposes of sections 63-701 through 63-710, Idaho Code, and for the purposes of the distributions required in section 63-3638, Idaho

Code, the state tax commission, county auditor, and the county commissioners shall use the corrected values and numbers allowed in this section to recompute and correct such distributions by adjusting future distributions to account for any difference. For the purposes of chapters 8 and 10, title 33, Idaho Code, the state department of education shall use the corrected values and numbers allowed in this section. [I.C., § 63-810, as added by 1996, ch. 98, § 9, p. 308.]

63-811. Computation of property taxes — Duty of county auditor.

— (1) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the property and operating property rolls, and must deliver the property and operating property rolls to the tax collector on or before the first Monday of November.

(2) The county auditor must cause to be computed the amount of the local property taxes levied on the total of the taxable value as entered on the subsequent property roll, and must deliver the subsequent property roll to the tax collector as soon as possible, without delay, after the first Monday of December.

(3) The county auditor must cause to be computed the amount of the state property tax and the amount of the local property taxes levied on the total taxable value as entered on the missed property roll, and must deliver the missed property roll to the tax collector as soon as possible, without delay, after the first Monday of March of the year following the year in which the assessment was entered on the missed property roll.

(4) For the purpose of this section, “taxable value” shall mean the portion of the equalized assessed value, less any exemptions and the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area of an urban renewal district, located within each taxing district which certifies a budget to be raised from a property tax levy.

(5) The county auditor, at the time of delivery to the county tax collector of the property roll, subsequent property roll, missed property roll or operating property roll with all property taxes computed, must subscribe an affidavit to such roll that he has to the best of his knowledge and ability computed the proper amount of property taxes due, and recorded such orders of the board of equalization as have been made and has made no other changes.

(6) Failure of the auditor to make the affidavit shall not affect the validity of any entry on the roll. The making of such affidavit, however, is declared to be a duty pertaining to the office of the county auditor. In every case where the said affidavit is omitted from the real property assessment roll, completed and delivered as aforesaid, the board of county commissioners must require the county auditor to make the same, and upon refusal or neglect of such county auditor to make and subscribe to such affidavit forthwith, the chairman of the said board must immediately file in the district court in the county, an information in writing, verified by his oath, charging such county auditor with refusal or neglect to perform the official

duties pertaining to his office, and thereupon he must be proceeded against as in such cases provided by law. [I.C., § 63-811, as added by 1996, ch. 98, § 9, p. 308; am. 2006 (1st E.S.), ch. 1, § 17.]

STATUTORY NOTES

Cross References. — Personal property assessment roll, completion and delivery, § 63-310.

Real property roll, completion procedure, § 63-312.

Seizure and sale of personal property for taxes, §§ 63-1101 — 63-1108.

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective January 1, 2006, deleted the former last sentence in Subsection

(4), which read: "When the portion of the property tax to be allocated to school districts as required in sections 33-1002 and 50-2908, Idaho Code, is calculated, the taxable value must include the value that exceeds the value of the base assessment roll."

Compiler's Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Determination of assessment roll.
Omission of certificate.
Priority of tax liens.
Substantial compliance required.
Surety liable for stolen money.
Validity of assessment.

Determination of Assessment Roll.

Where county board of equalization reduced assessor's assessment of cattle in county by 10% on July 13, but state tax commission on second Monday in August reinstated prior assessment of assessor, and county officers by order of board of county commissioners on September 14 refused to accept assessment ordered by state tax commission, the latter was entitled to writ of mandamus compelling county officers and county board of equalization to obey order of state tax commission though petition was not filed until December 3, since final determination of true assessment roll rests with state tax commission. *State Tax Comm'n v. Johnson*, 75 Idaho 105, 269 P.2d 1080 (1954).

Omission of Certificate.

Omission of certificate alone was mere informality which did not affect either validity of assessment or validity of appellant's title. *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

Priority of Tax Liens.

Lien of county and city taxes is same as that of state taxes, and they are of the same priority. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Under Idaho Const., Art. 7, § 7, § 43-720 and this section, state taxes are prior to all other liens against property. *Smith v. Nampa*,

57 Idaho 736, 68 P.2d 344 (1937).

State taxes, by the constitution, and county and city taxes, by legislative declaration, are prior to special assessments which are based on the theory of special benefit to the property against which the assessments are levied. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Substantial Compliance Required.

Substantial compliance with the requirements of the law in making assessments was all that was required, and when a tax deed was introduced in evidence, it was prima facie evidence of title and it was incumbent upon the person attacking the deed to prove the omission of some jurisdictional act or step which rendered it void. *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

Surety Liable for Stolen Money.

Under constitutional provision and statutes, surety on county assessor's bond was held liable to county for loss of personal property tax money and motor vehicle license money collected by assessor and stolen from assessor without assessor's fault. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

Validity of Assessment.

Each year the assessor must complete his assessment roll and must take and subscribe

an affidavit verifying such assessment; how-
ever, failure to take or subscribe such affidavit
shall not in any manner affect the validity of

such assessment. *Armstrong v. Jarron*, 21
Idaho 747, 125 P. 170 (1912).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local
Taxation, §§ 720-724, 834-880.

C.J.S. — 84 C.J.S., Taxation, §§ 640-735.

63-812. Accounting and collection of property taxes. — The tax collector shall collect and account for the amount of property taxes due and remit any property tax revenues collected to the county auditor showing distribution to the proper accounts or funds. [I.C., § 63-812, as added by 1996, ch. 98, § 9, p. 308.]

STATUTORY NOTES

Cross References. — General revenue
laws applicable, § 63-1301.
Local improvement district assessments,
§§ 50-1701 — 50-1772.
Monthly settlement of auditor with munic-
ipalities, § 63-1202.

Compiler's Notes. — Section 20 of S.L.
1996, ch. 98 read: "Section 20. Existing Rules
Remain in Effect. All rules heretofore adopted
by the state tax commission and in effect on
the effective date of this act shall remain in

full force and effect unless and until super-
seded or replaced by rules duly adopted by the
commission, or until the same are rejected,
amended or modified by the legislature in
accordance with the provisions of chapter 52,
title 67, Idaho Code, or until they expire as
provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L.
1996, ch. 98 provided that the act shall be in
full force and effect on January 1, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Assessment and collection of taxes.
Constitutionality.
Drainage districts.
Effect on city charter.
Liability of county.
Quarterly reporting system.

Assessment and Collection of Taxes.

In collecting municipal taxes under this section, the county officials merely act as the agents of the municipality in the performance of the duties required of them and this relationship of agency equally applies to the method of assessing and collecting taxes for both the chartered cities and the municipalities throughout the state. *Hamilton v. McCall*, 90 Idaho 253, 409 P.2d 393 (1965).

Since, according to the tax collection procedures followed in this state, the counties act as a collecting agency in the collection of taxes for the state and municipality, payment of property taxes to the county rather than the municipality itself was sufficient to establish payment of taxes as required to sustain a

claim based on adverse possession pursuant to § 5-210. *Rutledge v. State*, 94 Idaho 121, 482 P.2d 515 (1971).

Constitutionality.

Where Boise City charter provided that city taxes should be levied by the mayor and council, assessed by the city assessor, and collected by the city collector, the constitution did not prohibit the legislature from transferring the duties of the collection of Boise City taxes, and other duties as to taxes from the city officials, to the county officials, but the county officials, in collecting such taxes, merely act as agents of the city in performance of the duties required of them. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Drainage Districts.

Provision of this section for collection fee for county applies to assessments of a drainage district. *Drainage Dist. No. 2 v. Ada County*, 38 Idaho 778, 226 P. 290 (1924).

Effect on City Charter.

Where the general statute, providing that the assessment and collection of all general taxes of a city within a county were transferred to the county assessor, and that each county should retain the sum equal to one and one half per cent of the city moneys collected in the payment for services rendered, made no reference to the special city charter which contained provision regarding the assessment and collection of city taxes, the general statutes could not be construed as amending the city charter, since the general statutes so construed would violate the constitutional provision that every act shall embrace but one subject and matters properly connected therewith which shall be expressed in its title. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Boise City charter, regarding assessment and collection of general city taxes by the assessor and tax collector of the county, and providing that the county should pay over to the city all of the city tax moneys as fast as the same are collected, and that the city shall

pay to the county one half of one per cent of the amount of the city's taxes collected in full for the services rendered by the county officials, is valid, notwithstanding the general statutes providing that the county shall apportion the moneys so collected once a month to various tax units, and shall retain one and one half per cent of all city moneys collected and apportioned to the county current revenue fund. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Liability of County.

Where county was collecting sum for special improvement district, it was held liable to bondholders for amount improperly diverted to predatory animal fund. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227, 65 A.L.R. 1372 (1929).

Quarterly Reporting System.

The district court erred in requiring the taxable status of business machines to be determined on a monthly basis rather than on a quarterly basis, since in the interests of efficient recordkeeping and reporting a quarterly reporting system, and not a monthly reporting system, is required, and because property is to be assessed on a quarterly basis. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

63-813. Collection and enforcement — Actions against state of Idaho. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-813, as added by S.L.

1969, ch. 262, § 1, p. 806, was repealed by S.L. 1973, ch. 13, § 1.

CHAPTER 9

PAYMENT AND COLLECTION OF PROPERTY TAXES

SECTION.

- 63-901. Property taxes payable only in legal tender.
- 63-902. Property tax notice and receipts — Duty of tax collector.
- 63-903. When payable.
- 63-904. Special provisions for collection of property taxes on personal property.

SECTION.

- 63-905. Receipt for property taxes paid.
- 63-906. Interim payment account — Receipt for deposits.
- 63-907. Entry of delinquent tax — Duty of county treasurer.
- 63-908A. [Repealed.]
- 63-909. [Reserved.]
- 63-910. [Repealed.]

63-901. Property taxes payable only in legal tender. — All property taxes must be paid in lawful money of the United States. [I.C., § 63-901, as added by 1996, ch. 98, § 10, p. 308.]

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****ANALYSIS**

Legal tender.

Payment by check.

Legal Tender.

Territorial statute requiring payment of taxes in any other than lawful money at par was void as being in conflict with act of congress of February 25, 1862, authorizing issue of legal tender notes. *Haas v. Misner*, 1 Idaho 170 (1868).

Tax collectors of the several counties in territory had no right to demand payment of taxes in gold coin, or in anything but legal currency of the United States at its par value. *Crutcher v. Sterling*, 1 Idaho 306 (1869).

Payment by Check.

Check given by taxpayer to tax collector in payment of his tax, which is drawn on solvent bank in which maker had adequate balance, and for which receipt showing full payment of taxes was issued, is not legal payment of such taxes where check was not paid on account of tax collector's negligence in presenting it before bank failed. *Vial v. Paradis*, 44 Idaho 157, 255 P. 643 (1927); *Gray v. Boundary County*, 49 Idaho 589, 290 P. 399 (1930).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 839.

63-902. Property tax notice and receipts — Duty of tax collector.

— (1) For property on the property roll or operating property roll, the county tax collector must, prior to the fourth Monday of November in each year, mail to every taxpayer, or to his agent or representative, at his last known post-office address, a tax notice prepared upon forms prescribed in section 63-219, Idaho Code, which shall contain at least the following:

- (a) The year in which the property tax was levied;
- (b) The name and address of the property owner;
- (c) An accurate description of the property, or in lieu thereof, the tax number of record;
- (d) The parcel number;
- (e) Full market value for assessment purposes;
- (f) The total amount of property taxes due:
 - (i) State;
 - (ii) County;
 - (iii) City;
 - (iv) School district separately shown as:
 - (A) Maintenance and operation;
 - (B) Bond;
 - (C) Supplemental;
 - (D) Other;
 - (v) And every other tax being separately shown.
- (g) All property tax levies in the tax code area;
- (h) The date when such property taxes become delinquent;
- (i) Notation of delinquencies against said property;
- (j) Whether an interim payment account exists;

(k) The different payment options available to the taxpayer, his agent or representative shall be printed in boldface type in a contrasting color or highlighted on the face of the tax notice.

(2) The tax notices shall be numbered consecutively and the numbers must be entered upon all property rolls.

(3) Tax notices prepared in tax code area format shall state that levy sheets are available to the public.

(4) Levy sheets shall list the total property tax levy for each taxing district or taxing jurisdiction and the total in each tax code area.

(5) If the taxpayer is one other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall deliver to the equitable titleholder a statement of the total amount of property taxes billed, on or before the second Monday of December.

(6) The tax collector in each county of the state is authorized to destroy all duplicate property tax receipts and microfilm of tax receipts on file in his office as they reach ten (10) years old. Property tax receipts may be destroyed if information has been replicated in other storage media.

(7) Computer and data processing routines for completion of all phases of the property tax roll procedures may be utilized with the responsibility for completion of each office's statutory duties to remain under the supervision of that office. Wherever the designation "property roll" appears within title 63, data processing or computer procedures and forms may be substituted as permanent records.

(8) The county tax collector must, as soon as possible after the subsequent or missed property roll is delivered to him from the county auditor, mail a notice to every taxpayer listed on the subsequent or missed property roll, or to his agent or representative. The notice shall conform as nearly as possible to the notice required for property listed on the property roll.

(9) Failure to mail such property tax notice, or receipt of said notice by the taxpayer, shall not invalidate the property taxes, or any proceedings in the collection of property taxes, or any proceedings in the foreclosure of property tax liens.

(10) No charge, other than property taxes, shall be included on a tax notice unless the entity placing such charge has received approval from the board of county commissioners to place such charge on the tax notice and such entity:

(a) Has the authority by law to place a lien on property; and

(b) Has the authority to certify such charge to the auditor; and

(c) Is required to collect such charge in the same manner provided by law for the collection of real and personal property taxes. [I.C., § 63-902, as added by 1996, ch. 98, § 10, p. 308; am. 1997, ch. 117, § 33, p. 298; am. 1997, ch. 241, § 1, p. 701; am. 2006, ch. 322, § 1, p. 1021.]

STATUTORY NOTES

Cross References. — Disposition of forfeitures, § 19-4705.

Duties of officers relating to settlement with state, §§ 63-1202.

Amendments. — This section was amended by two 1997 acts — ch. 117, § 33, effective January 1, 1997 and ch. 241, § 1, effective July 1, 1998 — which do not appear

to conflict and have been compiled together.

The 1997 amendment, by ch. 117, § 33 added subsection (10).

The 1997 amendment, by ch. 241, § 1 added subdivision (1)(k).

The 2006 amendment, by ch. 322, in subsection (1)(f)(iv), inserted “separately shown as”; and added subsections (1)(f)(iv)(A) to (D).

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 1997, ch. 241 provided that the act should be in effect on and after July 1, 1998.

63-903. When payable. — (1) All property taxes extended on the property and operating property rolls shall be due and payable in full to the tax collector without late charges and interest on or before December 20 of the year in which the property taxes are levied. The property taxes may be paid in full or paid in two (2) halves, the first half on or before December 20 with a grace period extending to June 20 for the second half if the first half is totally paid.

(2) Any portion of a property tax may be paid at any time, but nothing in this section shall excuse costs, interest or late charges pursuant to section 63-1002, Idaho Code.

(3) If the first one-half (1/2) is not totally paid on or before December 20 late charges as defined in section 63-201, Idaho Code, and interest as defined in section 63-1001, Idaho Code, shall be assessed. If the first one-half (1/2) of the property tax has been paid in part, late charges and interest shall be calculated on the remaining first half tax due.

(4) If the second one-half (1/2) is not totally paid on or before June 20 late charges as defined in section 63-201, Idaho Code, and interest as defined in section 63-1001, Idaho Code, shall be assessed. If the second one-half (1/2) has been paid in part, late charges and interest shall be calculated on the remaining property tax due.

(5) Property taxes on the subsequent or missed property roll shall be billed within thirty (30) days after delivery of the property roll to the county tax collector or as otherwise provided for. The tax collector shall notify the property owner of the property taxes due without delay after delivery of the property roll. Delinquency occurs if the tax remains unpaid thirty (30) days after the bills are mailed.

(6) All property taxes and fees, together with any costs, late charges and interest collected by the county tax collector shall be remitted to the county auditor as provided in section 63-1201, Idaho Code.

(7) Payment of any current property taxes shall not invalidate any proceeding in the collection of a delinquency. [I.C., § 63-903, as added by 1996, ch. 98, § 10, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.

Delinquent taxes.

Drainage assessments.

Effect of insufficient tender.

Forfeiture of sales contract.

In general.

Construction.

Where county has parted with title by tax sale and period of redemption has expired, under the law in force at time of sale from county to a third party, time of redemption is not extended under this act. *Washington County v. Paradis*, 38 Idaho 364, 222 P. 775 (1923).

Delinquent Taxes.

Where a mortgage provided that any failure to comply with the terms of the mortgage would make the entire debt due and payable, the mortgagors' obligation, contained in the mortgage to pay before maturity all taxes on the realty, required payment by them of delinquent taxes, since the words "before maturity" could have no application to the payment of taxes on realty which cannot be paid before maturity. *Home Owner's Loan Corp. v. Stookey*, 59 Idaho 267, 81 P.2d 1096 (1938).

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

Drainage Assessments.

This section does not contemplate that drainage assessments are merged with general taxes and so considered part thereof, or that such latter taxes may not be paid while former is outstanding. *Booth v. Clark*, 42 Idaho 284, 244 P. 1099 (1926).

Effect of Insufficient Tender.

One liable to pay taxes, who makes a tender of an amount insufficient to cover amount of

taxes lawfully assessed, becomes liable for all penalties and interest upon any sum found to be due. *Washington Water Power Co. v. Kootenai County*, 270 F. 369 (9th Cir. 1921), modified on other grounds, 273 F. 524 (9th Cir. 1921).

Forfeiture of Sales Contract.

It is not ground for forfeiture of contract for sale of realty that taxes for certain year had become delinquent, when payment had been made for first half of year and second half had not yet been placed on delinquent list. *Abercrombie v. Stoddard*, 39 Idaho 146, 228 P. 232 (1924).

In General.

The county board of equalization at its December meeting has not been empowered by the legislature to hear complaints as regards assessments of real property, consequently such board was not empowered to equalize assessments of real property or hear complaints in regard thereto except at the board's June and July meetings as provided by statute, and since such board at its December meeting could only be concerned with equalization of assessments upon personal property, therefore in considering the property herein involved, an interest in real property, the appellants were not afforded an opportunity to register their complaints that the property was improperly included upon the personal property roll. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 842.

63-904. Special provisions for collection of property taxes on personal property. — (1) If a personal property owner fails to make timely payment on the first one-half (1/2) provided for, the unpaid portion of the entire tax shall immediately become due and payable and a late charge as provided in section 63-201, Idaho Code, and interest as provided in section 63-1001, Idaho Code, on the unpaid portion of the first half shall be added. Interest shall be calculated from January 1 of the year following the year for which the taxes were assessed.

(2) All personal property taxes are due and payable upon demand. If no demand is made, taxes may be paid in part or in full until the tax collector issues a warrant of distraint for collection of said taxes.

(3) Whenever the county assessor notifies the tax collector of personal property that has been listed on a property roll, the tax collector may demand immediate payment of any property taxes due from the owner. Property taxes due shall be calculated using the previous year's levies, unless current year's levies are known.

(4) In lieu of demanding immediate payment of property taxes due, the county tax collector may require a surety bond adequate to secure the payment and collection of property taxes that may be due to that county.

(5) Property taxes on transient personal property shall be payable on demand, or in full on the due date stated on the notice. No extensions shall be granted on transient personal property.

(6) In the event a taxpayer is unable to pay his personal property tax due on or before December 20, he may appeal to the county commissioners prior to the property tax becoming delinquent. If sufficient information is given to satisfy the county commissioners that the property taxes will be paid, the county commissioners may grant an extension of time for the payment of the property taxes, late charges and interest, not to exceed four (4) months. A warrant of distraint shall not be issued until the expiration of the extended time. No extensions shall be granted on the second one-half (1/2) of the property tax. [I.C., § 63-904, as added by 1996, ch. 98, § 10, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application.
Assessor charged with moneys.

Application.

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. Tobias v. State Tax Comm’n, 85 Idaho 250, 378 P.2d 628 (1963).

Assessor Charged with Moneys.

Under constitutional provisions and stat-

utes, county assessor was chargeable with all money coming into his possession in payment of personal property taxes and for motor vehicle licenses and would be given credit therefor only when he actually paid such money into county treasury. Bonneville County v. Standard Accident Ins. Co., 57 Idaho 657, 67 P.2d 904 (1937).

63-905. Receipt for property taxes paid. — Upon payment of property taxes, the tax collector shall issue a receipt if requested by the taxpayer. The record of payment must show the date paid and the amount of payment. If the taxpayer is other than the equitable titleholder, such as an escrowee, trustee of trust deed or other third party, the taxpayer shall, upon request of the equitable titleholder, deliver to the equitable titleholder a receipt of property taxes paid. In the event payment is mailed to the tax collector, the cancelled check may serve as a receipt. [I.C., § 63-905, as added by 1996, ch. 98, § 10, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Informal Tax Receipt.

Facts of this case justified conclusion that giving of informal tax receipt by public official

was a suspicious circumstance justifying investigation of his integrity. Griffith v. Anderson, 22 Idaho 323, 125 P. 218 (1912).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 847-849.

63-906. Interim payment account — Receipt for deposits. — Any person, upon application to the tax collector, may establish a payment schedule to allow payments including, but not limited to, monthly or quarterly, in amounts of at least twenty-five dollars (\$25.00) or the balance owing, to be accumulated toward the payment of current or future real or personal property taxes.

(1) The tax collector shall issue a numbered receipt consisting of:

(a) Date deposited;

(b) Name and address of person making deposit;

(c) The amount of payment; and

(d) Account identification number or parcel number or legal description.

(2) The county shall pay no interest on any interim payment receipts, and the amount so deposited cannot be withdrawn by the depositor. Such receipts shall not invalidate any proceedings in the collection of property taxes, or in the issuance of any delinquency or any proceedings in the foreclosure of tax liens.

(3) The payment shall be posted to the roll when the current property tax becomes due.

(4) The tax collector may return to the depositor any moneys deposited in excess of the amount necessary to satisfy the tax lien if the payment schedule is not maintained.

(5) The tax collector shall be held accountable for all moneys received under this subsection and shall be liable on his official bond for the custody and safekeeping of such moneys, except as to what may be on deposit in designated depositories under the provisions of the public depository law, which is hereby made applicable to such deposits. [I.C., § 63-906, as added by 1996, ch. 98, § 10, p. 308; am. 2006, ch. 322, § 2, p. 1021.]

STATUTORY NOTES

Amendments. — The 2006 amendment, inserted to, monthly or quarterly, in amounts" in by ch. 322, inserted "including, but not lim- the introductory paragraph.

63-907. Entry of delinquent tax — Duty of county treasurer. — The county treasurer shall, on or before the first day of January in the succeeding year, enter all delinquent taxes on the property rolls. Such entries shall be dated as of the first day of January and shall have the force and effect of a sale to the treasurer as grantee in trust for the county, for all property entered upon the property roll on which first installment of the taxes has not been paid. The settlement date shall be as of the close of business on the December due date of the preceding year.

The county treasurer shall, on or before the first day of July in the succeeding year, make delinquency entries to be dated as of the first day of January in the year the taxes fall delinquent for all property entered upon the property roll on which the second installment of the taxes have not been

paid. The settlement date shall be as of the close of business on the June due date of the current year. [I.C., § 63-907, as added by 1996, ch. 98, § 10, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Amount of penalty.
Delinquent tax lien.
District taxes and assessments.
Duty of tax collector.
Improvement liens.
Interest on taxes recovered.
Taxes involuntarily paid.

Amount of Penalty.

The unpaid assessment for 1922 became delinquent on the third Monday of December of that year. The penalty for delinquent state and county tax was 6 per cent, which was the rate for delinquent irrigation district assessment. The assessor correctly charged 6 per cent as penalty. *Nampa & Meridian Irrigation Dist. v. Barker*, 38 Idaho 529, 223 P. 529 (1924).

Delinquent Tax Lien.

Statutes providing that the sale of realty for taxes vests in the purchaser all right, title and interest therein, including delinquent taxes, which have become a lien upon the property since the date of tax sale certificate, upon which tax deed has been issued, apply to such annual instalment assessments as were spread on tax rolls for specific years between the date of tax certificate upon which tax deed was issued and the date of sale to the purchaser on tax sale. *Thompson v. Goble*, 58 Idaho 126, 71 P.2d 100 (1937).

District Taxes and Assessments.

Tax collector must receive general taxes tendered by taxpayer who refuses to pay drainage assessment. *Booth v. Clark*, 42 Idaho 284, 244 P. 1099 (1926).

Duty of Tax Collector.

The assessor should pay to the county treasurer moneys collected in his official capacity,

and this duty is created by statute. *Wonnacott v. Kootenai County*, 32 Idaho 342, 182 P. 353 (1919).

Improvement Liens.

The sale of the property in question to the purchaser had the effect of canceling and vacating all of the delinquent improvement district taxes which had become a lien on the property after the entry as delinquent tax; the purchaser took title free from the liens of the improvement districts attaching subsequent to the entry as delinquent. *Herbert v. Kester*, 62 Idaho 670, 115 P.2d 417 (1941).

Interest on Taxes Recovered.

State statute allowing interest on taxes refunded after erroneous collection is inapplicable in suits for refunds brought in the federal courts. *United States v. Nez Perce County*, 95 F.2d 232 (9th Cir. 1938).

Taxes Involuntarily Paid.

Where an Indian paid taxes on land accrued while he held land under patent, and testified that he did not protest payment because it would have done him no good, such payment was involuntary, in view of the fact that nonpayment would result in almost immediate sale, and the United States could recover such taxes as trustee for the Indian after canceling the Indian's patent. *United States v. Nez Perce County*, 95 F.2d 232 (9th Cir. 1938).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur.2d, State and Local Taxation, §§ 856-865.

**63-908A. County special school assistant fund — Levy therefor.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-908A, as added by 1953, ch. 123, § 2, p. 193, was repealed by S.L. 1963, ch. 311, § 4, p. 835.

63-909. [Reserved.]

**63-910. Annual county tax levy — County board of education.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C.A., § 61-806D, as added by 1947, ch. 257, § 6, p. 725, was repealed by S.L. 1963, ch. 142, § 1, p. 405.

CHAPTER 10

COLLECTION OF DELINQUENCY ON REAL, PERSONAL AND OPERATING
PROPERTY

SECTION.

- 63-1001. Effect of delinquency — Interest rate.
- 63-1002. Payment of delinquency — Order — Receipt.
- 63-1003. Lien and effect of delinquency.
- 63-1004. Payment of delinquency on segregated property.
- 63-1005. Pending issue of tax deed — General provisions — Notice.
- 63-1006. Hearing and issuance of tax deed.
- 63-1007. Redemption — Expiration of right.
- 63-1008. Effect of tax deed as evidence.
- 63-1009. Effect of tax deed as conveyance.
- 63-1010. Deeds upon redemption.

SECTION.

- 63-1011. Possession under tax deed conclusive as to regularity of proceedings.
- 63-1012. Sale of personal property upon delinquency.
- 63-1013. Warrants of distraint — Service and execution.
- 63-1014. Removal or sale or repossession of personal property before payment of property taxes on property rolls.
- 63-1015. Apportionment of proceeds from redemption.

63-1001. Effect of delinquency — Interest rate. — To avoid delinquency, total payment must be made in full to the county tax collector by the due date. Any delinquency shall have the force and effect of a sale to the county tax collector as grantee in trust for the county of the property described. Any payment on a delinquency is, in effect, a partial redemption of the property from tax sale. Interest on a delinquency will be charged at one percent (1%) per month calculated from January 1 following the year the tax lien attached, provided however, that the interest shall not be charged on collection costs. [I.C., § 63-1001, as added by 1996, ch. 98, § 11, p. 308.]

JUDICIAL DECISIONS

Cited in: Hardy v. McGill, 137 Idaho 280, 47 P.3d 1250 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Character of lien.
County purchases land.
Deed to county.
Enforcement of lien.
Sale by county.
Sale of interest if tax delinquent.
Time for redemption.
Unpaid warrants bear interest.

Character of Lien.

Under section 1547 of the R.S. of 1887 as amended, tax certificate vested in purchaser only a lien for sum paid. Bacon v. Rice, 14 Idaho 107, 93 P. 511 (1908).

Where adverse claimant was in possession of land and paid or tendered taxes assessed against it, priority of payment of taxes by another party who was not owner and was holder of tax certificate after payment constituted a lien upon land for such taxes, but did not defeat rights of adverse party. Johnson v. Sowden, 25 Idaho 227, 136 P. 1136 (1913).

Under R.C., § 1762, on filing certificate of tax sale with ex officio auditor and recorder, lien vested in purchaser and was divested only by the payment to county treasurer, on certificate of auditor, for use of purchaser, of the whole amount of money paid for such certificate, together with interest thereon. Rice v. Rock, 26 Idaho 552, 144 P. 786 (1914).

County Purchases Land.

When the property is offered and there is no purchaser in good faith of the same, the whole amount of the property assessed in any or separate descriptions shall be struck off to the county and a duplicate certificate delivered to the county treasurer. Bacon v. Rice, 14 Idaho 107, 93 P. 511 (1908).

Deed to County.

If property is not redeemed within three years from the date of the delinquency entry, the tax collector or his successor in office must make to the county a deed to the property. Thompson v. Goble, 58 Idaho 126, 71 P.2d 100 (1937).

Enforcement of Lien.

Tax sale certificate created a lien which ripened into title upon the issuance of a tax

deed and holder of certificate had an estate or interest in real property which could be enforced. McKinnon v. McIlhargey, 24 Idaho 720, 135 P. 826 (1913).

Sale by County.

A sale of real property by the board of county commissioners shall, subject to its provisions, vest in the purchaser all of the right, title and interest of the county in the property so sold. Herbert v. Kester, 62 Idaho 670, 115 P.2d 417 (1941).

Sale of Interest If Tax Delinquent.

The settler has the right under the Reclamation Act to mortgage or sell and convey his interest in said land and may lose it through the foreclosure of a mortgage. The county may tax his interest and, if the tax becomes delinquent, may sell his interest in the land. Cheney v. Minidoka County, 26 Idaho 471, 144 P. 343 (1914).

Time for Redemption.

Where county has parted with title by tax sale and period of redemption has expired, under the law in force at time of sale from county to a third party, time of redemption is not extended under this act. Washington County v. Paradis, 38 Idaho 364, 222 P. 775 (1923).

Unpaid Warrants Bear Interest.

Persons holding warrants issued by county auditor of independent school district may present same for payment. If there is not money sufficient to pay warrants in order of issuance, the treasurer shall indorse "not paid for want of funds." Warrants so indorsed shall bear interest at a rate of seven per cent per annum from date of indorsement until ten days after called for payment. American Nat'l Bank v. Joint Indep. Sch. Dist. No. 9, 61 Idaho 405, 102 P.2d 826 (1940).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 856-865, 891-897.

63-1002. Payment of delinquency — Order — Receipt. —

(1) Whenever a delinquency exists for any year, the taxpayer may pay to the tax collector any part of such delinquency together with the costs, late charges and interest. Costs include certified mailings, title searches, advertising and all other expenses for the processing and collection of the delinquency. Provided however, that any delinquency shall be applied to costs, collection costs, special assessments, charges, fees, interest, late charges and property tax in the proportion each bears to the total amount due. Payment applied to the property tax shall be posted directly to the roll.

(2) Payment may only be paid and accepted upon the oldest delinquency standing on the records of the county tax collector wherein such payment is made unless otherwise authorized by a judicial action. The second one-half (1/2) shall not be considered current if the first one-half (1/2) is delinquent.

(3) Upon payment of a delinquency, the tax collector shall issue to the taxpayer a receipt, if requested by the taxpayer. In the event payment is mailed to the tax collector, the cancelled check may serve as the receipt. Payment of current taxes shall not invalidate any proceeding in the collection of a delinquency. [I.C., § 63-1002, as added by 1996, ch. 98, § 11, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Application of later payments.
Moratorium act of 1933.

Application of Later Payments.

A county had no duty to apply taxpayer's 1976 and 1977 property tax payments to his 1975 delinquency where the 1976 and 1977 taxes were not delinquent. *Jahnke v. County of Bingham*, 115 Idaho 548, 768 P.2d 811 (Ct. App. 1989).

Moratorium Act of 1933.

The Moratorium Act of 1933 gave until at least the second Monday in January (January 14) 1935 to pay the tax and redeem the land from the tax liens. *American Nat'l Bank v. Joint Indep. Sch. Dist. No. 9*, 64 Idaho 691, 136 P.2d 976 (1943).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 860.

63-1003. Lien and effect of delinquency. — (1) Any delinquency on real property taxes in accordance with the provisions of this title shall constitute a perpetual lien in favor of the county for all property taxes, late charges and interest on the property described and shall entitle the county to a tax deed for such property in the manner provided for in this title. Such delinquency entry shall further constitute prima facie evidence in any legal

proceedings in which it may lawfully be used that the property described was subject to appraisal, assessment and taxation at the time the same was assessed, that said property was appraised, assessed and equalized according to law, that the property taxes levied on such property were levied according to law, that such taxes were not paid before the delinquency became effective, and that the property and taxes were entered upon the property roll.

(2) Any delinquency on personal property taxes in accordance with the provisions of this title shall be a first and prior, perpetual lien, except as otherwise provided by law, upon such personal property and all real and personal property of the owner of such personal property until all property taxes due upon such personal property have been paid. [I.C., § 63-1003, as added by 1996, ch. 98, § 11, p. 308.]

63-1004. Payment of delinquency on segregated property. —

(1) The record owner or owners or any party in interest of a segregated portion of the property covered by a delinquency may release the lien for property taxes, by paying to the tax collector the amount of property taxes due along with late charges, interest and costs, if any, on that particular piece of property. The county assessor shall determine and provide to the tax collector the market value for assessment purposes of that segregated portion of property, and the tax collector will calculate the property tax to be paid for any prior year or years of delinquency, including the late charges, accrued interest and costs incurred.

(2) The record owner or owners or any party in interest of a segregated portion of property covered by a tax deed may redeem that property at the time and in the manner provided in section 63-1007, Idaho Code, by paying to the tax collector the amount due on that particular piece of property including, but not limited to, the late charges, accrued interest, title search fees and other costs incurred. The county assessor shall determine and provide to the tax collector the market value for assessment purposes of that segregated portion of property, and the tax collector will calculate the property tax to be paid for that current calendar year and all prior years of delinquency. [I.C., § 63-1004, as added by 1996, ch. 98, § 11, p. 308.]

63-1005. Pending issue of tax deed — General provisions — Notice. — (1) If real property on which there is a delinquency is not redeemed within three (3) years from the date of delinquency, the county tax collector of the county wherein such property is situated must make, in favor of said county, a tax deed for such property. However, the county shall not be entitled to a tax deed for such real property until:

- (a) A notice of pending issue of tax deed has been given; and
- (b) An affidavit of compliance has been recorded.

(2) The county tax collector of the county wherein the real property for which a tax deed may issue shall serve or cause to be served written notice of pending issue of tax deed upon the record owner or owners and parties in interest of record in the following exclusive manner:

- (a) By serving or causing to be served a copy of such notice by certified mail with return receipt demanded upon the record owner or owners and

parties in interest of record at their last known address, such service of notice to be made no more than five (5) months nor less than two (2) months before the time set for the tax deed to issue;

(b) In the event that such notice is served as above described and returned undelivered after attempting to locate and serve the record owner or owners and parties in interest of record, by publishing a summary of such notice in a newspaper having general circulation in the county wherein the real property is situated. Such publication must be made at least once a week for four (4) consecutive weeks, the last publication of which is to be no more than two (2) months nor less than fourteen (14) days before the time set for the tax deed to issue.

(3) The record owner or owners and parties in interest of record shall be liable and pay to the county tax collector all costs and fees in the preparation, service and publication of such notice and the tax deed process and such costs shall become a perpetual lien upon the property in favor of the county tax collector.

(4) Such notice and summary thereof must contain the following items:

(a) The name and last known address of the record owner or owners;

(b) An accurate description of the property on which the delinquency stands, or, in lieu thereof, the tax number of record or parcel number used in assessing the same;

(i) A street address or other information which would be of assistance to the public in ascertaining the location of the property; or

(ii) The name and telephone number of a person, firm or business office from whom information concerning the location of the property may be obtained;

(c) The year for which the property tax was assessed and for which the delinquency exists;

(d) An itemized statement detailing the delinquency and all costs and fees incident to the delinquency and notice up to and including the date of the making of such notice;

(e) The date the delinquency occurred;

(f) The time, date, place at which, and by whom the tax deed will issue; and

(g) A statement that the record owner or owners or any party in interest shall have adequate opportunity to be heard, to confront and cross-examine any evidence or witness against the record owner or owners, and obtain and present evidence on behalf of the record owner or owners or any party in interest. Such statement shall also contain notice of to whom inquiries and objections shall be directed concerning the notice and information contained therein and by what date such inquiries and objections must be received.

(5) Any party in interest may file a written request for such notice in the office of the county tax collector of the county wherein the property for which the delinquency stands have been made is situated. Such request shall contain the following items:

(a) The name and address of the record owner or owners;

- (b) An accurate description of the property covered by the interest, or, in lieu thereof, the tax number of record or parcel number used in assessing the same;
- (c) The name and address of the party in interest;
- (d) An accurate description of the interest held; and
- (e) The date of expiration of the interest held.
- (6) If a record owner or owners or a party in interest shall have actual notice of the notice of pending issue of tax deed or that issuance of a tax deed is pending, it shall be deemed sufficient notice under this section.
- (7) Service shall be deemed completed upon depositing the certified letter containing the original or a copy of the notice of pending issue of tax deed with return receipt demanded in any United States post office, or upon physical delivery of such notice or copy thereof by the county tax collector or his appointed agent to the record owner or owners or party in interest, or upon the date of last publication.
- (8) No less than five (5) working days prior to the date on which the tax deed shall be issued, the county tax collector shall make an affidavit of compliance stating that he has complied with the conditions of issuance of notice of pending issue of tax deed described in this section, and stating particularly the facts relied on as constituting such compliance.
- (9) Such affidavit shall be recorded in the office of the county recorder. Such record of affidavit shall be prima facie evidence that such notice has been given.
- (10) Any person who knowingly and intentionally swears falsely to facts averred in any affidavit shall be guilty of perjury and be punished by a fine of not more than three hundred dollars (\$300). [I.C., § 63-1005, as added by 1996, ch. 98, § 11, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Affidavit confers jurisdiction.
- Affidavit prerequisite to issuing deed.
- Construction.
- County tax deed.
- Effect of subsequent legislation.
- Error not cured by deed.
- Insufficient description.
- Insufficient notice.
- Partial constitutional infirmity.
- Prima facie evidence of regularity.
- Reasonable and diligent search and inquiry.
- Sufficiency of affidavit.
- Tax on migratory livestock.
- Title conveyed.
- Voidable tax deeds.

Affidavit Confers Jurisdiction.

The actual existence of the facts required to be shown by the affidavit is the thing which

confers jurisdiction. The affidavit is merely the proof that the jurisdictional facts exist, but the failure to make the proof does not do

away with the facts which the proof would show. *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

Affidavit Prerequisite to Issuing Deed.

Proper, correct and sufficient affidavit detailing the acts performed is a jurisdictional prerequisite to issuance of a tax deed, and such affidavit must show personal service on party in possession of premises, if there be such. *Evans v. Poppie*, 51 Idaho 123, 4 P.2d 356 (1931).

Construction.

Where county has parted with title by tax sale and period of redemption has expired, under the law in force at time of sale from county to a third party, time of redemption is not extended under former similar law. *Washington County v. Paradis*, 38 Idaho 364, 222 P. 775 (1923).

County Tax Deed.

The purchaser took title to the property, freed from the liens of the improvement district attaching between the date of the entry of such taxes as delinquent and the date the county sold and conveyed the property to the purchaser. *Thompson v. Goble*, 58 Idaho 126, 71 P.2d 100 (1937).

Effect of Subsequent Legislation.

Right of redemption from tax sale must be governed by the law in force at time of sale, and cannot be abridged or enlarged by subsequent legislation, and this right follows title under tax sale certificates. *Washington County v. Paradis*, 38 Idaho 364, 222 P. 775 (1923). See also *Nampa & Meridian Irrigation Dist. v. Barker*, 38 Idaho 529, 223 P. 529 (1924).

Error Not Cured by Deed.

Where the tax sale certificate contains an erroneous description of the land, it cannot be cured by inserting the correct description in the deed, because the sale was void. *Cahoon v. Seger*, 31 Idaho 101, 168 P. 441 (1917).

Insufficient Description.

A tax deed based upon a tax certificate, void for the lack of description will not convey any title. *Dickerson v. Hansen*, 32 Idaho 18, 177 P. 760 (1918).

Insufficient Notice.

Because there was no evidence of any notice given whatsoever as required by this section and it was self-evident that the county treasurer was unable to truthfully recite the compliances required under statute, the issuance of the tax deed to county was invalid and the order declaring county to have superior right, title and interest in land must be vacated and title remains with original owner and heirs. *Cluff v. Bonner County*, 126 Idaho 950, 895 P.2d 551 (1995).

Partial Constitutional Infirmary.

To the extent that this section does not provide for notice to a mortgagee of record, who has not previously requested notice, this section is constitutionally infirm for allowing deprivation of a property interest without due process. *Wylie v. Patton*, 111 Idaho 61, 720 P.2d 649 (Ct. App. 1986).

Prima Facie Evidence of Regularity.

The tax deed is prima facie evidence of the regularity of all proceedings from the assessment to the execution of the tax deed and the burden rests upon the party attacking the deed to overcome this presumption. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

Reasonable and Diligent Search and Inquiry.

A taxpayer's failure to include an address on the warranty deed does not relieve the county of its duty to perform a reasonable and diligent search and inquiry to find the taxpayer's address and notify him prior to issuance of a tax deed. *Giacobbi v. Hall*, 109 Idaho 293, 707 P.2d 404 (1985).

A reasonable and diligent inquiry under this section is one a diligent person, intent upon ascertaining a fact, would ordinarily make; it is an inquiry made with good faith, to ascertain the truth, and to be as full as the circumstances of the situation will permit. *Giacobbi v. Hall*, 109 Idaho 293, 707 P.2d 404 (1985).

Sufficiency of Affidavit.

The purpose of the statute in requiring proof of notice that property will be deeded to the county for delinquent taxes is that a record be made of the giving of the notice as by law required. The contents of the affidavit are sufficient for that purpose. *Kivett v. Owyhee County*, 58 Idaho 372, 74 P.2d 87 (1937).

Tax on Migratory Livestock.

Taxes on migratory livestock, when properly extended on real property assessment roll, become lien on real property of owner. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).

Title Conveyed.

If real property taxes are delinquent, this section provides the procedure for issuance of a tax deed by a county, and a properly issued tax deed conveys title to the county. *Federal Land Bank v. Parsons*, 116 Idaho 545, 777 P.2d 1218 (Ct. App. 1989).

Voidable Tax Deeds.

Error or omission in performance of duty imposed by law on a taxing officer, which results to prejudice of taxpayer, or which would raise the presumption that he was

prejudiced, when viewed in the light of his conduct and the surrounding facts and circumstances under which he acted, should be resolved and construed in favor of the taxpayer and on the side of equity. *Parsons v. Wrble*, 21 Idaho 695, 123 P. 638 (1912).

Where failure to pay taxes for a given year is due to the honest mistake of both assessor and taxpayer, a tax deed issued for such unpaid taxes is voidable at the suit of owner within reasonable time after knowledge thereof. *Fix v. Gray*, 26 Idaho 19, 140 P. 771 (1914).

Where taxes have been actually paid by owner, but erroneously credited by officer, lien is discharged, and sale of property for delinquent taxes is voidable. *Lohr v. Curley*, 27 Idaho 739, 152 P. 185 (1915).

Where description is so indefinite and uncertain as to invalidate assessment, a tax sale and tax deed in pursuance thereof do not convey title to such lots. *Booth v. Cooper*, 22 Idaho 451, 126 P. 776 (1912).

Tax deed based upon invalid assessment conveys no title. *Meserole v. Whitney*, 22 Idaho 543, 127 P. 553 (1912).

63-1006. Hearing and issuance of tax deed. — (1) When a record owner or owners or any party in interest upon whom a notice of pending issue of tax deed is served or who has actual knowledge of such notice or its contents fails, to appear or otherwise defend and answer at the time set for hearing in such notice and the county commissioners are satisfied that the county tax collector has fulfilled the requirements of section 63-1005, Idaho Code, the county commissioners shall, without further notice, immediately direct the county tax collector to issue and record a tax deed in favor of the county.

(2) When a record owner or owners or any party in interest upon whom such notice is served or who has actual knowledge of such notice or its contents appears or answers at the date specified in such notice, the county commissioners shall hear evidence and witnesses and make a final decision in writing. Such final decision shall be mailed by registered or certified mail return receipt demanded upon all parties affected by its action. If the county commissioners shall find that the county tax collector has conformed to the requirements of section 63-1005, Idaho Code, and that a delinquency was owing on the property described and that such delinquency has not been paid, the county commissioners shall immediately direct the county tax collector to issue a tax deed in favor of the county. Such final decision shall include findings of fact and conclusions of law.

(3) A record of the proceedings shall be kept and entered into the county minutes.

(4) Any person who is aggrieved by a final decision of the county commissioners concerning the issuance of a tax deed is entitled to have that decision reviewed by the district court of the district wherein the county is located by filing a petition in the district court within thirty (30) days after receipt of the final decision of the county commissioners. Such filing does not itself stay enforcement of the county commissioners' decision; however, the county commissioners may grant, or the reviewing court may order, a stay upon appropriate terms. Review shall be conducted by the court without a jury and shall be confined to the record in the county minutes. The court may reverse or modify the decision of the county commissioners if substantial rights of the appellant have been prejudiced because the county commissioners' findings, conclusions or decisions are:

(a) Made upon unlawful procedure;

(b) Clearly erroneous in view of reliable, probative and substantial evidence on the whole record; or

(c) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(5) All costs and fees of any hearing or proceeding shall be awarded to the prevailing party or in the discretion of the reviewing court each party shall be responsible for their own costs and fees; provided however, the costs and fees shall not be ordered paid by any county or its officials in absence of a showing of gross negligence, gross nonfeasance or gross malfeasance by the county or its officers and a showing of substantial and definite injury to the petitioning party.

(6) The form of the tax deed issued must contain the following items:

(a) The name and address of the former record owner or owners;

(b) The name of the county in whose favor the tax deed issues;

(c) An accurate description of the property using a township, range, section and division of section, together with a statement as to acreage, or in the appropriate case, using block and lot numbers or as described in a city plat; and if appropriate, include the tax number;

(d) A statement that the tax deed issues out of a delinquency and hearing; and

(e) The tax deed must be signed by the county tax collector and acknowledged before the county recorder and shall be recorded as provided by law.

[I.C., § 63-1006, as added by 1996, ch. 98, § 11, p. 308.]

63-1007. Redemption — Expiration of right. — (1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire one (1) year from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed during said redemption period. In the event a tax deed is issued and payment is not received within one (1) year of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county. [I.C., § 63-1007, as added by 1996, ch. 98, § 11, p. 308; am. 2001, ch. 193, § 1, p. 657.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2001, ch. 193 provided that the act should take effect on and after January 1, 2002.

JUDICIAL DECISIONS

Cited in: Hardy v. McGill, 137 Idaho 280, 47 P.3d 1250 (2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Bid.
County tax deed.
Owner's redemption not barred by laches.
Time for redemption.
Validity of deed.

Bid.
A bid, within the meaning of former similar statute, must, in order to terminate the right of redemption, be made in conformity with the terms of the sale as authorized by the county commissioners and as advertised. Kivett v. Owyhee County, 58 Idaho 372, 74 P.2d 87 (1937).

County Tax Deed.
A mortgagee's right to redeem being terminated, not by deed, but by purchaser's bid for land acquired by county under tax deed, the mortgagee in purchaser's suit to quiet title could not question the validity of the deed because signed only by county commissioners' chairman. Shail v. Croxford, 54 Idaho 408, 32 P.2d 777 (1934).
A deed from the county, to property acquired by it for nonpayment of taxes, conveys to the county's purchaser the property free from irrigation assessments and also municipal taxes levied against such property. Smith v. Nampa, 57 Idaho 736, 68 P.2d 344 (1937).

Owner's Redemption Not Barred by Laches.
The owner of a right of redemption, who was misled by a clerk of board of county commissioners and by purchaser of property

from the county into believing that the county's public sale of property was for cash as advertised and for more money than the owner was then able to pay in cash, was not barred by laches from asserting right of redemption, because of illegality of the sale, after more than four years had elapsed, since opposing parties could not avail themselves of a delay caused, or contributed to, by their own conduct. Kivett v. Owyhee County, 58 Idaho 372, 74 P.2d 87 (1937).

Time for Redemption.
Where reality is subject to redemption from tax deed made to county, time of redemption is governed by the law in effect at the time the county obtained title. Winans v. Swisher, 68 Idaho 364, 195 P.2d 357 (1948).

Validity of Deed.
Because there was no evidence of any notice given whatsoever as required by statute and it was self-evident that the county treasurer was unable to truthfully recite the compliances required under statute, the issuance of the tax deed to county was invalid and the order declaring county to have superior right, title and interest in land must be vacated and title remains with original owner and heirs. Cluff v. Bonner County, 126 Idaho 950, 895 P.2d 551 (1995).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 988-1030.
A.L.R. — Soldiers' and Sailors' Civil Relief Act as affecting time for redemption. 35 A.L.R. Fed. 649.

63-1008. Effect of tax deed as evidence. — (1) The matters recited in the delinquency must be recited in the deed, and such deed duly acknowledged or proved is prima facie evidence that:

- (a) The property was appraised and assessed as required by law;
- (b) The property was equalized as required by law;
- (c) The property taxes were levied in accordance with law;
- (d) The property taxes were not paid;
- (e) The delinquency took effect at the proper time as prescribed by law;
- (f) The property was not redeemed;
- (g) The person who executed the deed was the proper officer;
- (h) Where the real property was sold to pay property taxes on personal property that the real property belonged to the person liable to pay the property tax.

(2) The deed duly acknowledged or proved is prima facie evidence of the regularity of all other proceedings, from the assessment by the assessor inclusive up to the execution of the deed. [I.C., § 63-1008, as added by 1996, ch. 98, § 11, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Burden of proof.
Description in deed.
Effect of deed.
Erroneous description.
Invalid deed.

Burden of Proof.

Fact that tax deed is made prima facie evidence of title simply shifts burden of proof; it does not deny right to defend title against a tax deed. *Wilson v. Locke*, 18 Idaho 582, 111 P. 247 (1910).

In a mortgage foreclosure action, holder of realty mortgage securing a note duly executed and recorded by the owner of the realty who sold the realty had the burden of proof of the vendor's title to realty against a purchaser who denied the vendor's title and denied that his purchase of realty was made subject to such mortgage, and introduced a tax deed to realty, executed and delivered to purchaser by irrigation district. *Bogart v. Bagley*, 65 Idaho 177, 141 P.2d 975 (1943).

The effect of the statutes in Idaho relating to tax deeds as evidence is to change the common-law order of proof, and to cast the burden of proof on the person attacking a tax title to affirmatively prove such irregularities or defects in prior proceedings as would overcome the prima facie case made by tax deeds. *Bogart v. Bagley*, 65 Idaho 177, 141 P.2d 975 (1943).

Description in Deed.

The description contained in the certificate or deed is complete if it describes a certain tract or parcel of land with sufficiency to enable anyone by the aid of such description

to locate the land therein conveyed. *Wilson v. Jarron*, 23 Idaho 563, 131 P. 12 (1913).

Effect of Deed.

Where defendant relies upon tax deed for title, plaintiff may contest those matters in regard to which the statute makes the tax deed only prima facie evidence. *McMasters v. Torsen*, 5 Idaho 536, 51 P. 100 (1897).

A tax deed is prima facie evidence of the facts and things mentioned in it; and to defeat such deed, defendant must show nonexistence of such facts or some of them. *Cooperative Sav. & Loan Ass'n v. Green*, 5 Idaho 660, 51 P. 770 (1897); *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

The tax deed is prima facie evidence of the regularity of all proceedings from the assessment to the execution of the tax deed and the burden is upon the party attacking the deed to overcome this presumption. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932); *Shail v. Croxford*, 54 Idaho 408, 32 P.2d 777 (1934).

Erroneous Description.

The omission or failure of the assessor to properly state or estimate the number of acres in the tract may be fatal and render the assessment void and a subsequent tax deed ineffective for any purpose. *Cahoon v. Seger*, 31 Idaho 101, 168 P. 441 (1917).

Invalid Deed.

If, through some mistake or negligence, the officer fails to make a good and valid deed in pursuance of the sale and the certificate previously issued, he may exercise the power

vested in him by law and voluntarily issue a good and valid deed, when the defects are called to his attention. *White Pine Mfg. Co. v. Morey*, 19 Idaho 49, 112 P. 674 (1910).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 975, 976, 980-987.

63-1009. Effect of tax deed as conveyance. — The deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section 63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessments. [I.C., § 63-1009, as added by 1996, ch. 98, § 11, p. 308.]

STATUTORY NOTES

Cross References. — Repossession of water rights by irrigation district upon issuance of tax deed, §§ 43-801 — 43-806.
Sale of county property, § 31-808.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accuracy of description.
Appurtenances.
Construction.
Liability for subsequent taxes.
Notice to mortgagees of record.
Priorities.
Redemption right follows title.
Right to possession.
Title conveyed.

Accuracy of Description.

More strictness is required in the description in an assessment where property is to be sold for delinquent taxes than is required in a deed of conveyance from grantor to grantee. In the former case, parol or extraneous evidence is not admissible, while in the latter case, it may become admissible. *Wilson v. Jarron*, 23 Idaho 563, 131 P. 12 (1913).

Appurtenances.

Carey Act water right, under § 42-2022, does not attach and become such an appurtenance to the land that the title to such water right is conveyed under a tax deed of the land, where the purchase price of the water right has not been paid. *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 150 P. 336 (1915).

Construction.

Exceptions in statute obviously prevent tax deed from conveying absolute title, and fact that deed is made out to state will not take it out of rule. *State ex rel. Hoover v. Stuart*, 41 Idaho 126, 238 P. 305 (1925).

Reasonable interpretation of statute is that tax deed executed to county at tax sale conveys to county absolute title to lands, free of all encumbrances except any lien for taxes which may have attached subsequently to assessment on account of delinquency of which land was sold. *Larson v. Gilderoy*, 45 Idaho 764, 267 P. 234 (1928).

Drainage district assessments and school district taxes are "taxes" within meaning of term as used in this section. *Heffner v. Ketchen*, 50 Idaho 435, 296 P. 768 (1931).

Liability for Subsequent Taxes.

Words "except any lien for taxes which may have attached subsequently to the assessment," clearly reserve county's lien for subsequent delinquencies. *State ex rel. Hoover v. Stuart*, 41 Idaho 126, 238 P. 305 (1925).

Sale of property for general taxes was held not to free such property from liability for payment of local improvement assessments attaching subsequent to assessment for taxes for which property was sold. *Hunt v. City of St. Maries*, 44 Idaho 700, 260 P. 155 (1927).

Lands purchased from county, acquired by reason of failure of prior owners to pay taxes, duly assessed, are liable for taxes assessed subsequent to taxes on account of delinquency for which property was sold. *Larson v. Gilderoy*, 45 Idaho 764, 267 P. 234 (1928).

Notice to Mortgagees of Record.

Before the county can obtain title by a tax deed, free of mortgages of record, the treasurer must provide notice of the proposed issuance of the tax deed both to mortgagees of record who have requested such a notice and to mortgagees of record who have not requested such a notice; furthermore, the notice given must allow for sufficient time to reasonably afford the mortgagee an opportunity to respond to the proposed issuance of the tax deed. Otherwise, the issuance of a tax deed will not convey title to the property free from the recorded security interest. *Wylie v. Patton*, 111 Idaho 61, 720 P.2d 649 (Ct. App. 1986).

Priorities.

Reclamation lien on Carey Act land was held subordinate to lien for taxes on same land. *Equitable Trust Co. v. Cassia County*, 5 F.2d 955 (9th Cir. 1925).

Lien of mortgage on land was superior to later lien of tax assessed upon owner's livestock and fixed on land. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).

Redemption Right Follows Title.

The right of redemption from a tax sale must be governed by the law in force at the time of the sale and cannot be abridged or

enlarged by subsequent legislation, and this right follows the title under the tax sale certificates. *Lawrence v. Defenbach*, 23 Idaho 78, 128 P. 81 (1912).

Right to Possession.

Holder of tax title to real estate who finds property unoccupied may enter upon and take actual possession of the premises, and in doing so he is not liable to original owner of property whose title has been divested by the tax deed. *Steltz v. Morgan*, 16 Idaho 368, 101 P. 1057 (1909).

Tax deed has no more force or effect as writ of assistance for procuring possession of real estate than any other deed, and holder of such deed who finds property occupied must, if occupant refuses to surrender possession, resort to same legal remedy for possession as holder of any other deed would employ. *Steltz v. Morgan*, 16 Idaho 368, 101 P. 1057 (1909).

Possession of property under claim of right at time it was sold for taxes thereafter constitutes color of title as against a stranger purchasing land at a tax sale, where land has been assessed to unknown owner. *Johnson v. Sowden*, 25 Idaho 227, 136 P. 1136 (1913).

A tax deed conveys absolute title to the grantee free of all liens and encumbrances which may have attached prior to the date of such deed. *Andrews v. North Side Canal Co.*, 52 Idaho 117, 12 P.2d 263 (1932).

Title Conveyed.

Tax deed to the county gives it a clear title to the property conveyed thereby, except as to unnotified mortgagees whose mortgages are of record and who have requested notice, and also excepting taxes which have accrued under subsequent assessments. *Smith v. Nampa*, 57 Idaho 736, 68 P.2d 344 (1937).

If the property is not redeemed within the statutory limitations, the tax collector or his successor in office must make to the county a deed to the property, and a subsequent purchaser takes title to the property, freed from the liens of the improvement district attaching between the date of entry of such taxes as delinquent and the date of the sale to the purchaser. *Thompson v. Goble*, 58 Idaho 126, 71 P.2d 100 (1937).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 982-985.

63-1010. Deeds upon redemption. — In all cases where real property has been or may hereafter be sold for delinquency and a deed has been issued to the county therefor, and redemption has been made in the manner provided and in accordance with the provisions of section 63-1007, Idaho Code, the county tax collector, must issue a deed to the redemptioner; and

upon the giving of such deed, such tax deed so issued to the county and the delinquency and tax sale upon which the same is based and all delinquencies and sales for prior year delinquencies shall become null and void, and all right, title and interest acquired by the county, under and by virtue of such tax deed, or tax sales, or delinquencies, shall cease and terminate. [I.C., § 63-1010, as added by 1996, ch. 98, § 11, p. 308.]

JUDICIAL DECISIONS

Cited in: Hardy v. McGill, 137 Idaho 280, 47 P.3d 1250 (2002).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 997.

63-1011. Possession under tax deed conclusive as to regularity of proceedings. — (1) Any and all tax deeds issued by counties, or any other municipal or quasi-municipal corporations of the state of Idaho, authorized by law to issue deeds for delinquencies or assessments, shall, when the property has been sold by such counties or other municipal or quasi-municipal corporations and held and peaceably possessed by the purchaser or his successors in interest for more than one (1) year and upon which the purchaser or his successors in interest have paid all property taxes lawfully assessed thereon for such period, be conclusive as to the regularity and validity of all proceedings required by law to be done in making the levy, assessment, or sale of such property for the delinquency or assessment for which such property was sold.

(2) No action shall be maintained to contest any delinquency or assessment, or the proceedings upon which the tax deed has been issued after such property has been sold by the taxing agency, and the purchaser or his successors in interest have paid all property taxes legally levied or assessed thereon for a period of one (1) year, and such purchaser's deed from such county or other taxing agency, shall be conclusive evidence of the doing of each and all of the acts, and taking of each and all proceedings required by law as to the issuance of a valid tax deed to such property. [I.C., § 63-1011, as added by 1996, ch. 98, § 11, p. 308; am. 2001, ch. 193, § 2, p. 657.]

STATUTORY NOTES

Cross References. — General provisions relating to adverse possession, § 5-203 et seq.

Requirement of payment of taxes to give effect to adverse possession, § 5-210.

Effective Dates. — Section 3 of S.L. 2001, ch. 193 provided that the act should take effect on and after January 1, 2002.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 1050-1058.

63-1012. Sale of personal property upon delinquency. — (1) Upon a delinquency of any personal property tax, the county tax collector shall issue a warrant of distraint for the collection of the delinquency. The warrant of distraint shall bear the date of its issuance, and shall be directed to the county sheriff. The warrant shall give the name of the delinquent taxpayer and his mailing address as ascertained by the county tax collector. The warrant shall also describe generally the personal property upon which the delinquency exists and give the amount of each delinquency. The warrant shall contain a direction to the county sheriff to seize and sell a sufficient amount of the property, or any other personal property of the delinquent taxpayer to be found within the county, with the minimum bid sufficient to pay the delinquency, together with interest and late charges thereon and together with all fees, commissions, mileage and costs accruing thereon.

(2) The county tax collector shall keep a record of the date of the issuance of each warrant of distraint and of the return, showing in detail the amount collected or the fact that no personal property belonging to the delinquent taxpayer was found. A record of all warrants of distraint shall, upon their return, be kept by the tax collector for a period of two (2) years. The collection of any delinquency, or the return of a warrant of distraint showing no property found, shall relieve the county sheriff and tax collector and their bondsmen from responsibility of that delinquency. Upon the return of any warrant of distraint showing property taxes uncollected it shall be the duty of the tax collector, when directed by the county commissioners, to commence and prosecute to judgment an action against the delinquent taxpayer, and no property shall be exempt from levy and sale upon execution issued on the judgment. [I.C., § 63-1012, as added by 1996, ch. 98, § 11, p. 308.]

STATUTORY NOTES

Cross References. — Distraint and sale of personal property for taxes, §§ 63-1101 et seq.

Execution sales, §§ 11-301 — 11-313.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Inadequate description.

Lien.

Methods of collection.

Inadequate Description.

Where taxpayer alleged that warrants of distraint and tax receipts did not adequately and sufficiently describe the property, but where taxpayer failed to allege future damage through the county's seeking again to collect the same taxes, the district court did not abuse its discretion in dismissing taxpayer's suit for declaratory judgment. V-1 Oil Co. v.

County of Bannock, 97 Idaho 807, 554 P.2d 1304 (1976).

Lien.

The lien for taxes is the first lien upon the property assessed for such taxes; it is also a lien only upon the then existing interest of its owner in any other property, and is not superior to any incumbrance on such other prop-

erty theretofore created by the act of the owner. *Scottish Am. Mtg. Co. v. Minidoka County*, 47 Idaho 33, 272 P. 498 (1928).

Methods of Collection.

Delinquent personal property taxes might be collected by distraint or by a suit in the name of the county, aided by attachment against property of the owner of the property

taxed. *Lemhi County ex rel. Gilbreath v. Boise Livestock Loan Co.*, 47 Idaho 712, 278 P. 214 (1929).

The procedure prescribed by the legislature in respect to levying, assessing and collecting taxes must be strictly observed. *Tobias v. State Tax Comm'n*, 85 Idaho 250, 378 P.2d 628 (1963).

63-1013. Warrants of distraint — Service and execution. — (1) All warrants of distraint issued by the tax collector shall be served and executed by the sheriff in the manner provided by law for the services of executions by levy upon personal property and he shall make return of the same to the tax collector of the county within ninety (90) days from the date of his receipt thereof with an endorsement thereon showing that the delinquency therein described, together with interest, late charges and costs, as provided by law, have been collected, or that, no property can be found to seize under the warrant. For making a false return the sheriff shall be liable to the county for double the amount of the property taxes, with interest and costs.

(2) Fees allowed for issuing warrants of distraint, collection, levy and return of same, shall be ten dollars (\$10.00) for issuing each warrant. When levying on a warrant of distraint, the provisions of section 31-3203, Idaho Code, shall apply in determining service fees.

(3) If the sheriff returns the warrant of distraint showing that no property can be found upon which a levy can be made to collect the delinquency, he shall note in the return the county, if any, in this state to which the delinquent taxpayer may have moved together with his mailing address and the date of his departure shall also be noted on the returns. Upon the filing of the sheriff's return showing that any delinquent taxpayer has moved to another county in this state, it shall be the duty of the tax collector to immediately issue and mail another warrant of distraint to the sheriff of the county to which the delinquent taxpayer is so shown to have moved, or in which personal property belonging to him may be found, and the sheriff to whom the other warrant of distraint is issued shall serve and return the warrant in the manner provided for the service and return of original warrants of distraint, making return of fees and commissions earned by him to the county auditor of his county, and paying any delinquency and fees collected, shown by the other warrant of distraint to be due, to the tax collector issuing the other warrant. Should a sheriff to whom the other warrant of distraint is issued be unable to find any property out of which the delinquency may be collected, he shall so return to the tax collector issuing the warrant. [I.C., § 63-1013, as added by 1996, ch. 98, § 11, p. 308; am. 1997, ch. 117, § 34, p. 298.]

STATUTORY NOTES

Cross References. — Service of executions, § 11-301.

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and

provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-1014. Removal or sale or repossession of personal property before payment of property taxes on property rolls. — (1) Whenever any person, firm or corporation owning any personal property shall desire to remove the personal property from the county or sell or repossess the property before all property taxes due and payable including the current year's taxes have been paid upon the personal property, the property taxes shall be paid to the tax collector upon demand and before the removal of the property from the county. It shall be the duty of the tax collector to collect the property taxes provided for in this section, and all the provisions of this chapter are hereby made available to the tax collector in the collection of such taxes.

(2) It shall be a misdemeanor for any person, firm or corporation to move from the county or sell or repossess any personal property or manufactured home without the payment of the current year's property taxes or without paying property taxes due and owing, and upon conviction the person, firm or corporation shall, in addition to any penalty which the court may impose, pay to the tax collector a sum not in excess of double the amount of property tax which was collectible on the property removed or sold or repossessed, together with all costs and late charges provided for in this chapter. The excess sum shall be collected by the tax collector in the same manner as the original property tax. [I.C., § 63-1014, as added by 1996, ch. 98, § 11, p. 308.]

63-1015. Apportionment of proceeds from redemption. — Upon the redemption from tax sale of any property described in any delinquency entry, the amount paid on account of such redemption, shall be paid into the county treasury by the tax collector, upon the certificate of the county auditor, to be apportioned among the several state and county funds and taxing districts, as provided for the apportionment of property taxes. [I.C., § 63-1015, as added by 1996, ch. 98, § 11, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Drainage Assessments.

It is not contemplated that drainage assessments are to be merged with general taxes and so considered part thereof, or that such

latter taxes may not be paid while former is outstanding. *Booth v. Clark*, 42 Idaho 284, 244 P. 1099 (1926).

CHAPTER 11

SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES

SECTION.	SECTION.
63-1101. Seizure of property for refusal to pay property tax — Duty of tax collector.	63-1108. Purchase by county.
63-1102. Sale.	63-1109. [Reserved.]
63-1103. Disposition of proceeds.	63-1110 — 63-1112. [Repealed.]
63-1104. Bill of sale.	63-1113, 63-1114. [Reserved.]
63-1105. Resale.	63-1115, 63-1116. [Repealed.]
63-1106. Sale of additional property.	63-1117 — 63-1126. [Reserved.]
63-1107. Disposition of excess.	63-1127 — 63-1136. [Repealed.]
	63-1137 — 63-1140. [Reserved.]
	63-1141. [Repealed.]

63-1101. Seizure of property for refusal to pay property tax — Duty of tax collector. — In case any person refuses to pay the property tax levied on any personal property belonging to him when demanded by the tax collector, the tax collector shall direct the sheriff to seize and sell as much of the personal property or any other property of the person as will be sufficient to pay the property taxes, late charges, interest, costs and expenses accruing thereon, as estimated by the tax collector. [I.C., § 63-1101, as added by 1996, ch. 98, § 12, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Lien.
Property held by receiver.

Lien. Tax is not a lien on personal property until actual seizure thereof. <i>Palmer v. Pettingill</i> , 6 Idaho 346, 55 P. 653 (1898).	seizure and sale for taxes, but court having possession thereof should direct receiver to pay taxes. <i>Palmer v. Pettingill</i> , 6 Idaho 346, 55 P. 653 (1898).
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Property Held by Receiver.
Property in hands of receiver is not liable to

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 866-888, 891, 892, 894-990.	C.J.S. — 84 C.J.S., Taxation, §§ 685-715.
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63-1102. Sale. — The sale must be made after one (1) week’s notice of the time and place thereof, given by publication in a newspaper of general circulation in the county or posting in three (3) public places within the county, and must be at public auction for cash, and each article seized must be sold separately to the highest bidder. [I.C., § 63-1102, as added by 1996, ch. 98, § 12, p. 308.]

63-1103. Disposition of proceeds. — The sheriff shall collect from the proceeds of the sale, in addition to the estimated amount of property taxes, all costs and expenses incurred in publishing or posting the notices of the

sale, in making the sale and in keeping and caring for the property. After collecting the proceeds and noting the costs of the sale, the sheriff shall have an immediate settlement with the tax collector. [I.C., § 63-1103, as added by 1996, ch. 98, § 12, p. 308.]

63-1104. Bill of sale. — On payment of the amount bid for the property sold the sheriff shall make out and deliver a bill of sale thereof which, with the delivery of the property sold, vests title thereto, in the purchaser. [I.C., § 63-1104, as added by 1996, ch. 98, § 12, p. 308.]

63-1105. Resale. — In the event of the refusal of any bidder to pay the amount bid and complete his purchase, the sheriff may either sue the purchaser upon his bid or offer the property for resale. [I.C., § 63-1105, as added by 1996, ch. 98, § 12, p. 308.]

63-1106. Sale of additional property. — In the event that the property seized does not bring sufficient money to pay the property taxes and costs, the tax collector shall direct the sheriff to seize and sell additional property liable for the property tax, pursuant to section 63-1012(1), Idaho Code. [I.C., § 63-1106, as added by 1996, ch. 98, § 12, p. 308.]

63-1107. Disposition of excess. — All excess over the property taxes and costs of the proceedings of any sale must be returned to the owner of the property or deposited in the county treasury to be refunded by order of the county commissioners. Any unsold portion of any such property shall be stored until claimed by the owner or for thirty (30) days, whichever is less. The owner shall pay storage and transportation costs when reclaiming any unsold property. [I.C., § 63-1107, as added by 1996, ch. 98, § 12, p. 308.]

63-1108. Purchase by county. — In the event that no person bids on any property offered for sale, or if such property, in the judgment of the tax collector exceeds in value the amount of the highest bid made and the tax collector deems it for the best interests of the county, he shall bid on the property himself for the county. He shall dispose of the purchased property by sale in the same manner as other personal property belonging to the county. However, the tax collector shall not buy any property for the county when a sufficient sum to defray the property taxes and costs of sale is bid therefor. [I.C., § 63-1108, as added by 1996, ch. 98, § 12, p. 308.]

STATUTORY NOTES

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

63-1109. [Reserved.]**63-1110 — 63-1112. Tax collector's January settlement — Delivery of roll — Duties of auditor — Tax collector's July settlement. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised ((See R.C., §§ 1739, 1741, 1912, ch. 8, § 24, p. 41) 1913, ch. 58, §§ 122 — 124, p. 173; reen. C.L. 133:122 — 133:124; am. 1919, ch. 77, §§ 3 — 5, p. 278; C.S.,

§§ 3242 — 3244; I.C.A., § 61-1010, 61-1012, 61-1014; am. 1969, ch. 455, §§ 33, 34, p. 1205) were repealed by S.L. 1989, ch. 100, § 4, effective January 1, 1990.

63-1113, 63-1114. [Reserved.]**63-1115. Transfer and assignment of delinquency certificates. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1919, ch. 77, § 22, p. 284; C.S., § 3247; I.C.A., § 61-1015, was repealed by

S.L. 1989, ch. 100, § 4, effective January 1, 1990.

63-1116. Delinquency certificates governed by prior laws. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised S.L. 1919, ch. 77, § 23, p. 284; C.S., § 3248; I.C.A., § 61-1016, was repealed by

S.L. 1969, ch. 455, § 83, effective January 1, 1970.

63-1117 — 63-1126. [Reserved.]**63-1127. Tax deed — Issuance. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — This section, which comprised R.C., § 1763; am. 1912, ch. 8, § 27, p. 43, repealed 1913, ch. 58, § 212, p. 173; reen. 1917, ch. 151, part of § 6, p. 475; reen. C.L. 133:137; am. 1919, ch. 77, § 15, p. 282; C.S., § 3256; am. 1923, ch. 45, § 4, p. 49; am.

1929, ch. 140, § 2, p. 248; am. 1931, ch. 169, § 1, p. 3; I.C.A., § 61-1025; am. 1933, ch. 2, § 1, p. 3; am. 1939, ch. 3, § 2, p. 8, was repealed by S.L. 1980, ch. 71, § 6, effective March 14, 1980.

63-1128 — 63-1132. Moratorium on tax deeds for 1936 to 1938 — Penalty and interest on delinquent taxes — Alternative moratorium. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised I.C.A., §§ 61-1025a — 61-1025e, as added by 1939, ch. 3, §§ 3-7, p. 8;

am. 1939, ch. 9, §§ 1-3, p. 23, were repealed by S.L. 1969, ch. 445, § 83, effective January 1, 1970.

63-1133 — 63-1136. Issuance of tax deeds. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, which comprised R.C., § 1763; am. 1912, ch. 8, § 27, part of subd. 1763; repealed 1913, ch. 58, § 212, p. 173; substantially reen. 1917, ch. 151, part of § 6, p. 476; reen. C.L. 133: 139-142; am. 1919, ch. 77, §§ 17-20, p. 282; C.S.,

§§ 3257 — 3260; am. 1921, ch. 232, § 1, p. 520; am. 1925, ch. 33, § 1, p. 46; am. 1931, ch. 181, § 1, p. 298; I.C.A., §§ 61-1026 — 61-1029; am. 1935, ch. 32, § 1, p. 56; am. 1959, ch. 2, § 1, p. 4, were repealed by S.L. 1980, ch. 71, § 6, effective March 14, 1980.

63-1137 — 63-1140. [Reserved.]**63-1141. Validation of deeds. [Repealed.]****STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1931, ch. 85, § 2, p. 144; I.C.A.,

§ 61-1034, was repealed by S.L. 1989, ch. 100, § 9, effective January 1, 1990.

CHAPTER 12**SETTLEMENT OF REVENUE OFFICERS****SECTION.**

63-1201. Monthly and final settlement of tax collector.
63-1202. Settlement by county auditor.
63-1203 — 63-1206. [Reserved.]

SECTION.

63-1207, 63-1208. [Repealed.]
63-1209 — 63-1223. [Reserved.]
63-1224. [Repealed.]

63-1201. Monthly and final settlement of tax collector. — On the first Monday of each month, except the second Monday of January and July, the county tax collector shall settle with the county auditor for all moneys collected, including property taxes levied on property, and make a detailed statement under oath, showing the amount of money collected for state and county purposes and for every city, school district, road district or other taxing district or authority, since his last settlement, and shall pay all the moneys into the county treasury upon the certificate of the county auditor, to be apportioned as provided by law. [I.C., § 63-1201, as added by 1996, ch. 98, § 13, p. 308.]

STATUTORY NOTES

Cross References. — Penalty for auditor's default in settlement, § 63-1402.

JUDICIAL DECISIONS**DECISIONS UNDER PRIOR LAW****ANALYSIS**

Action by county.
Collection of city taxes by county officers.
Liability of assessor.
Liability of surety.

Action by County.

County may sue to have tax collector account for, or get into his possession, sum due, or have him pay it as tax collector to treasurer on settlement with auditor. *Washington County v. Fidelity & Deposit Co.*, 50 Idaho 322, 295 P. 1003 (1931).

Under this section on the first Monday of each month a cause of action arises in favor of the county against the tax collector for non-compliance and the burden to explain any shortage is on the collector. *Washington County v. Fidelity & Deposit Co.*, 50 Idaho 322, 295 P. 1003 (1931).

Collection of City Taxes by County Officers.

Where Boise City charter provided that city taxes should be levied by the mayor and council, assessed by the city assessor, and collected by the city collector, the constitution did not prohibit the legislature from transferring the duties of the collection of Boise City taxes, and other duties as to taxes, from the city officials to the county officials, but the county officials, in collecting such taxes, merely acted as agents of the city in performance of the duties required of them. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Boise City charter regarding assessment and collection of general city taxes by the assessor and tax collector of the county, and providing that the county should pay over to the city all of the city tax moneys as fast as the same are collected, and that the city shall pay to the county one half of one per cent of the amount of the city's taxes collected in full for the services rendered by the county officials, is valid, notwithstanding the general

statutes providing that the county shall apportion the moneys so collected once a month to various tax units, and shall retain one and one half per cent of all city moneys collected and apportioned to the county current revenue fund. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Liability of Assessor.

Under constitutional provisions and statutes, county assessor was chargeable with all money coming into his possession in payment of personal property taxes and for motor vehicle licenses, and would be given credit therefor only when he actually paid such money into county treasury. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

Under constitutional provision and statutes, surety on county assessor's bond was liable to county for loss of personal property tax money and motor vehicle license money collected by assessor and stolen from assessor without assessor's fault. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

Liability of Surety.

Where there was no entry showing transfer of funds from tax collector's account to that of treasurer and no auditor's certificate authorizing transfer, surety on treasurer's bond is not liable for loss of funds resulting from insolvency of bank. *Fremont County v. Salisbury*, 48 Idaho 465, 285 P. 459 (1929).

Cited in: *City of Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 881-886.

C.J.S. — 84 C.J.S., Taxation, §§ 663-672; and 85 C.J.S., Taxation, § 1066.

63-1202. Settlement by county auditor. — (1) The county auditor must, on the second Monday of each month, transmit to the clerk of every taxing district having a treasurer whose duty it is to receive, keep and disburse all moneys belonging to it, a settlement of all moneys belonging to each district, paid into the county treasury since the last transmittal; provided however, that in the months of July and January the money may be transmitted no later than the twenty-fifth day of the month.

(2) On the second Monday of each month the county auditor shall transmit to the appropriate agency all moneys belonging to the state paid into the county treasury on and after the second Monday of the preceding month, showing from what sources the money was received and the amount received from each source, with a statement duly sworn to before an officer authorized to administer oaths. [I.C., § 63-1202, as added by 1996, ch. 98, § 13, p. 308.]

STATUTORY NOTES

Cross References. — Monthly settlement for licenses, § 63-2306.

Transmission of funds to state treasurer, § 63-1307.

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until super-

seded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Application.

This section has no application to payment by county treasurer to state treasurer of money collected for licensing of motor vehi-

cles, but relates to transmission of funds received by county treasurer for payment of property taxes. *State v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

63-1203 — 63-1206. [Reserved.]

63-1207. Stock in trade of merchants — Assessment — Merchant defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised C.S., § 3268-B, as added by S.L. 1931, ch. 204, § 2-A, p. 387; I.C.A., § 61-1108;

am. 1947, ch. 93, § 9, p. 161, was repealed by S.L. 1951, ch. 218, § 1, p. 448.

63-1208. Migratory livestock — Assessment. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised C.S., § 3268-C, as added by 1931,

ch. 204, § 2-B, p. 387; I.C.A., § 61-1109, was repealed by S.L. 1975, ch. 157, § 1, p. 405.

63-1209 — 63-1223. [Reserved.]

63-1224. Imports and merchandise stocks. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1913, ch. 58, § 160, p. 173; reen. 1917, ch. 55, § 1, subd. 160, p. 126; reen. C.L.

133:160; C.S., § 3284; I.C.A., § 61-1125, was repealed by S.L. 1989, ch. 232, § 15, effective January 1, 1990.

CHAPTER 13

MISCELLANEOUS PROVISIONS OF TAX LAW

- SECTION.
- 63-1301. Application to taxing districts.
 - 63-1302. Cancellation and refund of property tax.
 - 63-1303. Adjustment of property taxes by county commissioners — Duties of tax collector.
 - 63-1304. Adjustment of late charges or interest.
 - 63-1305. Refund or credit of property taxes by order of court or board of tax appeals.
 - 63-1306. Procedure and proof of payment.
 - 63-1307. Transmission of funds to state treasurer.
 - 63-1308. Property tax paid under protest — Apportionment — Action for recovery.
 - 63-1309. Special taxing district or bond pro-

- SECTION.
- posals defeated in election bars subsequent elections for specified time — Exception — Board of education may conduct election — Municipalities, water or sewer districts may conduct bond election.
 - 63-1310. Destruction of personal property.
 - 63-1311. Fees for services.
 - 63-1311A. Advertisement of and hearing on fee increases.
 - 63-1312. Municipal property taxes — Notification of valuation.
 - 63-1313. Limitation on property taxes — Value of real and personal property — Special tax levies.
 - 63-1314. Costs for professional services to be lien on property.

63-1301. Application to taxing districts. — The provisions of this title governing and in aid of the appraisal, assessment, levy and collection of state and county property taxes, are hereby made applicable to all general and special taxes of any taxing district incorporated, organized or chartered under any general or special laws of this state and authorized to collect revenue under the provisions of the laws of this state. [I.C., § 63-1301, as added by 1996, ch. 98, § 14, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

- Collection of city taxes by county officers.
- Interest on taxes recovered not allowable in federal court.
- Priority of lien.
- Special assessments for improvements.
- Special school tax.

Collection of City Taxes by County Officers.

Where Boise City charter provided that city taxes should be levied by the mayor and council, assessed by the city assessor, and collected by the city collector, the constitution did not prohibit the legislature from transferring the duties of the collection of Boise City taxes, and other duties as to taxes, from the city officials to the county officials, but the county officials in collecting such taxes merely act as agents of the city in performance of the duties required of them. *Bagley v. Gilbert*, 63

Idaho 494, 122 P.2d 227 (1942).

Interest on Taxes Recovered Not Allowable in Federal Court.

State statute allowing interest on taxes refunded after erroneous collection is inapplicable in suits for refunds brought in the federal courts. *United States v. Nez Perce County*, 95 F.2d 232 (9th Cir. 1938).

Priority of Lien.

Lien of county and city taxes is same as that of state taxes, and they are of the same

priority. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227 (1929).

Special Assessments for Improvements.

Special assessments for improvements shall be levied and collected as separate taxes, in addition to the taxes for general revenue purposes. *Maguire v. Whillock*, 63 Idaho 630, 124 P.2d 248 (1942).

school meeting was called, as provided by law, rests with the electors in attendance at the annual meeting. The amount of money certified authorizes a special tax to be levied for school districts for buildings or repairing school property, for school equipment and for the support of the school. *Northern P.R.R. Co. v. Chapman*, 29 Idaho 294, 158 P. 560 (1916).

Special School Tax.

The right to levy a tax where an annual

63-1302. Cancellation and refund of property tax. — (1) The county commissioners may, at any time when in session, cancel property taxes which for any lawful reason should not be collected, and may refund to any taxpayer any money to which he may be entitled by reason of a double payment of property taxes on any property for the same year, or the double assessment or erroneous assessment of property through error. Notwithstanding any other provisions of law, in any case in which the county commissioners find that, due to error or otherwise by fault of the county, an excess amount of property tax was paid, the county commissioners may refund the excess amount so collected plus pay the same late charges and delinquency interest rate on that amount which the county would regularly require of a taxpayer who is delinquent, and the county commissioners may adopt an ordinance or resolution to establish such payments.

(2) The county commissioners may refund to the purchaser of any property when it has been determined by the county commissioners that such sale is void or invalid, the amount paid by such purchaser to the county with interest thereon from the date of such payment at the rate of six percent (6%) per annum.

(3) All proceedings of the county commissioners in the cancellation or refund of property taxes or refund of payments made at void sale must be recorded in the official minutes. All such refund of property taxes or payments must be paid upon warrants drawn on the county current expense fund by the county auditor or upon checks issued by the county tax collector. All such refunds shall be apportioned to the various funds or taxing districts. [I.C., § 63-1302, as added by 1996, ch. 98, § 14, p. 308.]

STATUTORY NOTES

Cross References. — Equalization of values, § 63-502.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.

Failure to exhaust administrative remedies.

Forfeiture of refund right.

Interest on taxes recovered not allowable in federal court.

Payments.

Refund provisions.
Remedy against excessive tax.
Remedy against illegal tax.
Statute of limitations.
Statutory remedy exclusive.

Construction.

Conceding the assessment of 1952 of the property in question to have been excessive and subject to reduction by the board of equalization, it was not for that reason an unlawful or void assessment; nor was it an "erroneous assessment . . . through error" as to invalidate the taxes levied thereon. Hence the order by the district court for refund for the taxes paid for 1952 was not authorized by this section. In re Felton's Petition, 79 Idaho 325, 316 P.2d 1064 (1957).

Failure to Exhaust Administrative Remedies.

In suit against county treasurer and county assessor for declaratory judgment to have property taxes apportioned, court held that where plaintiff had failed to exhaust his administrative remedies his suit must be dismissed. Thompson v. Dalton, 95 Idaho 785, 520 P.2d 240 (1974).

Forfeiture of Refund Right.

It is only after determination that a tax sale is void that the right of the purchaser to refund can be declared forfeited. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

Interest on Taxes Recovered Not Allowable in Federal Court.

State statute allowing interest on taxes refunded after erroneous collection is inapplicable in suits for refunds brought in the federal courts. United States v. Nez Perce County, 95 F.2d 232 (9th Cir. 1938).

Payments.

Under a contract to purchase lands for delinquent taxes, the payments so made are not to be considered voluntary payments so as to defeat right to recovery where application for refund is properly made after sale is declared void. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

Refund Provisions.

The provisions of statute providing for refund to purchaser of delinquency certificate found to be void are mandatory and require that purchaser of tax deed, declared void, be refunded all payments, interest and taxes. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

Where there is statutory provision for refund to purchaser of tax deed, the rule of caveat emptor does not apply. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

The right to refund of payment made for tax deed does not accrue to the purchaser until it is definitely determined that such deed is void. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

The right of refund of purchaser of land at tax sale is governed by the statutes in force at the time the deed is declared to be void. Shea v. Owyhee County, 66 Idaho 159, 156 P.2d 331 (1945).

Remedy Against Excessive Tax.

Where taxpayer is dissatisfied with valuation placed on his property, he must apply to board of equalization for relief at its regular session, and he cannot apply to board of commissioners for reduction to collect part of taxes he has paid under protest unless he has so applied to board of equalization. Bengoechea v. Elmore County, 23 Idaho 397, 130 P. 459 (1913).

Where taxpayer alleged excessive assessments on his personal property arising from the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administrative process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. V-1 Oil Co. v. County of Bannock, 97 Idaho 807, 554 P.2d 1304 (1976).

Remedy Against Illegal Tax.

Illegal taxes paid under protest can be recovered by suit if tax collector understands that taxes are regarded as illegal and that suit will be instituted to recover them. Shoup v. Willis, 2 Idaho (Hasb.) 120, 6 P. 124 (1885); Weiser Nat'l Bank v. Jeffreys, 14 Idaho 659, 95 P. 23 (1908); Bengoechea v. Elmore County, 23 Idaho 397, 130 P. 459 (1913); Idaho Irrigation Co. v. Lincoln County, 28 Idaho 98, 152 P. 1058 (1915).

General rule is that taxes voluntarily paid may not be recovered, especially where illegality depends upon mistake of law. Asp v. Canyon County, 43 Idaho 560, 256 P. 92 (1927).

Tax on homestead entry paid without protest cannot be recovered on ground of mistake of law. Asp v. Canyon County, 43 Idaho 560, 256 P. 92 (1927).

Statute of Limitations.

Determination of invalidity gives rise to claim against county, which starts the running of the statute of limitations. Wilson v.

Twin Falls County, 47 Idaho 527, 277 P. 1114 (1929).

As respects the right of purchaser at tax sale to a refund, the statute of limitations does not begin to run until after the right to same accrues. *Shea v. Owyhee County*, 66 Idaho 159, 156 P.2d 331 (1945).

Statutory Remedy Exclusive.

Where taxpayer alleged excessive assessments on his personal property arising from

the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administrative process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 608-611.

72 Am. Jur. 2d, State and Local Taxation, §§ 1059-1114.

C.J.S. — 84 C.J.S., Taxation, §§ 607-639.

63-1303. Adjustment of property taxes by county commissioners — Duties of tax collector. — (1) Whenever the county commissioners shall make any adjustments correcting errors or any other tax adjustments coming within the authority vested by law in such body, the clerk of the board shall, without delay, prepare and deliver to the county tax collector, a copy of the proceedings of the county commissioners.

(2) It shall be the duty of the tax collector to make the necessary corrections. All such copies shall be full authority for the tax collector to make adjustments as ordered; however, the tax collector shall assume no personal responsibility as to the legality of the orders but such responsibility shall rest entirely with the county commissioners. [I.C., § 63-1303, as added by 1996, ch. 98, § 14, p. 308.]

63-1304. Adjustment of late charges or interest. — The county commissioners of any county within the state of Idaho may, by resolution, authorize the county tax collector to make adjustments of late charges, interest and fees, not to exceed the designated limit as set by the county commissioners, in order to facilitate the collection of property taxes. [I.C., § 63-1304, as added by 1996, ch. 98, § 14, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Adjustments.

—Application made to board.

—Discretionary.

Adjustments.

—Application made to Board.

Hospital would not be denied relief under this section, simply because it applied directly to the board of county commissioners for an adjustment rather than to the tax collector. *Eastern Idaho Health Servs., Inc. v.*

Burtenshaw, 122 Idaho 904, 841 P.2d 434 (1992).

—Discretionary.

Under this section, the board of county commissioners is not required to authorize the tax collector to adjust penalties and interest which are assessed. In stating that the

board “may authorize” such an adjustment, it seems clear that the legislature intended such decisions to be left to the discretion of the board. The fact that the board is statutorily authorized to make adjustments does not

mean that failure to do so is an abuse of discretion. *Eastern Idaho Health Servs., Inc. v. Burtenshaw*, 122 Idaho 904, 841 P.2d 434 (1992).

63-1305. Refund or credit of property taxes by order of court or board of tax appeals. — (1) When any court or the board of tax appeals orders a refund of any property taxes imposed under chapters 1 through 17, title 63, the county commissioners of the county or counties which collected the taxes may either refund taxes or apply the amount to be refunded as a credit against taxes due from the taxpayer in the following year. The county commissioners may use a combination of both a payment and a credit to effect the refund.

(2) As used in this section, “refund” includes property tax described in subsection (1) of this section found by the court or the board of tax appeals to have been overpaid and not lawfully due, interest due on the refund of such tax, costs and other amounts ordered paid by a court or the board of tax appeals.

(3) In the event a refund is paid, payments must be made by warrants drawn on the county’s current expense fund by the county auditor. The auditor shall apportion the amount of property taxes cancelled as credit to the tax collector. The auditor shall charge the various funds and taxing districts with their proportionate share of the refund and credit the current expense account.

(4) If a credit is given the following year, the credit shall be allowed against actual property taxes assessed to the taxpayer by the taxing districts which received the taxes ordered to be refunded.

(5) Amounts equal to the refunds or credits allowed in this section may be included in amounts certified pursuant to sections 63-802 through 63-807, Idaho Code, but shall not be a part of the operating budget within the meaning of section 63-802, Idaho Code. [I.C., § 63-1305, as added by 1996, ch. 98, § 14, p. 308.]

63-1306. Procedure and proof of payment. — (1) No procedure or action relating to the appraisal or assessment of property or the collection of property taxes is illegal on account of informality.

(2) Proof of payment of property taxes shall be the sole responsibility of the taxpayer. [I.C., § 63-1306, as added by 1996, ch. 98, § 14, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Informality not reviewable.
Test of informality.

Informality Not Reviewable.

Mere irregularity in the exercise of a rightful power will not be reviewed on certiorari. *Murphy v. Board of Comm'rs*, 6 Idaho 745, 59 P. 715 (1899).

Test of Informality.

Where property is subject to taxation, a substantial compliance with the require-

ments of the law is all that is required. Mere failure of officials to perform duty required of them by law cannot be taken advantage of by property owner for sole purpose of escaping such taxation; there must be prejudice and injury to such owner. *Armstrong v. Jarron*, 21 Idaho 747, 125 P. 170 (1912).

63-1307. Transmission of funds to state treasurer. — All moneys required under the provisions of this title to be transmitted to the state treasurer shall be transmitted at the expense of the county. [I.C., § 63-1307, as added by 1996, ch. 98, § 14, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutional Requirement.

Under Idaho Const., Art. 7, § 7, all taxes levied and collected for state purposes must be paid into the state treasury, without any deduction for commissions or other charges.

Cunningham v. Moody, 3 Idaho 125, 28 P. 395 (1891); *Guheen v. Curtis*, 3 Idaho 443, 31 P. 805 (1892); *Wickersham v. Manion*, 4 Idaho 137, 36 P. 700 (1894); *Epperson v. Howell*, 28 Idaho 338, 154 P. 621 (1916).

63-1308. Property tax paid under protest — Apportionment — Action for recovery. — (1) All property taxes paid under protest shall be apportioned as other property taxes are apportioned.

(2) An action against a county, an officer, or officer de facto, for property taxes or money paid to such county, officer, or officer de facto under protest, or seized by such officer, in his official capacity as a collector of taxes, and which it is claimed ought to be refunded, shall be commenced within sixty (60) days after such payment or seizure. [I.C., § 63-1308, as added by 1996, ch. 98, § 14, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeal from action of commissioners.

Centrally assessed taxpayers.

Collateral attack upon decision of assessor.

Exhaustion of administrative remedies.

Implied partial repeal.

Local actions.

Necessity for protest.

Remedy.

Appeal from Action of Commissioners.

Where taxpayer sought a declaratory judgment that action of county commissioners in setting tax levies without taking into account estimated revenues from sources other than taxation violated § 31-1605 and also sought a

refund of ad valorem taxes paid under protest, the time for taxpayer's appeal was within twenty days after the first publication of the ad valorem tax levies and not within sixty days of payment of taxes under protest. *V-1 Oil Co. v. County of Bannock*, 97 Idaho

807, 554 P.2d 1304 (1976).

Centrally Assessed Taxpayers.

It would make little or no practical sense to require centrally assessed taxpayers to challenge those assessments in local actions filed pursuant to this section. Further, such would tend to defeat the sought-after uniformity in the valuation and assessment of public transportation and utility properties which is statutorily mandated under Title 63, Chapter 7. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Collateral Attack Upon Decision of Assessor.

The taxpayer cannot ignore the statutory appeal process by paying the tax under protest and then filing an action under this section for refund of the tax; such a collateral attack upon the decision of the assessor and the board of equalization is not permitted. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

Exhaustion of Administrative Remedies.

This section does not permit an appeal of an action to a district court despite failure to exhaust administrative remedies. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

Implied Partial Repeal.

Section 63-3811 has implicitly repealed this section to the extent that it exempts from the provisions of this section application to a taxpayer seeking review of a statewide valu-

ation of utility or railroad operating property made by the tax commission. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Local Actions.

This section contemplates protest actions directed against the acts of local taxing officials in the county in which the taxes are protested, rather than officials and entities of state government. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Necessity for Protest.

No sufficient protest being made, the officer or the district would be in no position to protect himself or itself against the consequences of an action to recover the money paid on an irrigation district assessment. *Lundy v. Pioneer Irrigation Dist.*, 52 Idaho 683, 19 P.2d 624 (1933).

Generally, taxes cannot be recovered unless there has been a protest made at the time of their payment. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Remedy.

Proceeding for writ of mandate against county equalization board and county assessor was proper remedy rather than payment of tax and suit for refund, where state tax board reduced assessment made by county assessor and affirmed by county equalization board. *Utah Oil Refining Co. v. Hendrix*, 72 Idaho 407, 242 P.2d 124 (1952).

63-1309. Special taxing district or bond proposal defeated in election bars subsequent elections for specified time — Exception — Board of education may conduct election — Municipalities, water or sewer districts may conduct bond election. — If any election has been held for the formation of any special taxing district, or for the approval of any bond issue or other proposal which would have resulted in a property tax levy, and the proposal submitted at such election was defeated, no subsequent election shall be held within six (6) months from and after the date of such prior election for the same or a similar purpose in any district which includes any part of the area which was affected by the prior election. In the event any school building is destroyed or rendered unusable for school purposes by reason of fire, flood or other catastrophe, and a school bond election for the purpose of the replacement of such building is prohibited by the provisions of this section, the state board of education shall have the power to authorize an election for such purpose by order based upon a finding of such facts. The provisions of this section shall not apply to school elections held solely for determining property tax levies for general school purposes not involving the issuance of bonds. This time requirement between elections shall not apply to municipalities or water and/or sewer districts when bond issues are being proposed for the installation or improvement of water supply systems or public sewerage systems which

have been deemed necessary by the Idaho state board of health [and welfare] to bring such system or systems in conformance with state statutes or rules of the state board of health [and welfare]. [I.C., § 63-1309, as added by 1996, ch. 98, § 14, p. 308.]

STATUTORY NOTES

Compiler's Notes. — The bracketed insertion in the last sentence was made by the compiler to reflect a name change authorized

by S.L. 1973, ch. 286, § 1 and S.L. 1974, ch. 23, § 47. See § 56-1006.

63-1310. Destruction of personal property. — In the event of the destruction of personal property by fire, flood or other natural disaster after the first day of January of any year the lien of the personal property tax shall attach to and follow any insurance that may be upon said property and the insurer shall pay to the county tax collector from the insurance money all property taxes, late charges, interest and costs incurred that may be due unless cancelled by the county commissioners. [I.C., § 63-1310, as added by 1996, ch. 98, § 14, p. 308.]

63-1311. Fees for services. — (1) Notwithstanding any other provision of law, the governing board of any taxing district may impose and cause to be collected fees for those services provided by that district which would otherwise be funded by property tax revenues. The fees collected pursuant to this section shall be reasonably related to, but shall not exceed, the actual cost of the service being rendered.

(2) No charge, other than property taxes shall be included on a tax notice unless the taxing district placing such charge has received approval by the board of county commissioners to place such charge on the tax notice and meets the criteria set forth in section 63-902, Idaho Code. [I.C., § 63-1311, as added by 1996, ch. 98, § 14, p. 308; am. 1997, ch. 117, § 35, p. 298.]

STATUTORY NOTES

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full

force and effect retroactive to January 1, 1997. Approved March 15, 1997.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Street restoration and maintenance fee.
Tax on users of public streets.

Street Restoration and Maintenance Fee.

Revenue to be collected from a city's street restoration and maintenance fee had no necessary relationship to the regulation of travel over its streets, but rather was to generate funds for the nonregulatory function of re-

pairing and maintaining streets. *Brewster v. City of Pocatello*, 115 Idaho 502, 768 P.2d 765 (1988).

Tax on Users of Public Streets.

While this section provides for the imposition of certain fees, nowhere does it authorize

a municipality to impose a tax upon users or abutters of public streets. *Brewster v. City of Pocatello*, 115 Idaho 502, 768 P.2d 765 (1988).

63-1311A. Advertisement of and hearing on fee increases. — No taxing district may make a decision approving a fee increase that is in excess of five percent (5%) of the amount of the fee last collected or a decision imposing a new fee, unless it first holds a hearing upon such proposed fee increase or fee imposition at a regular or special meeting of the district’s governing body and after it gives public notice of such hearing in the manner provided in this section. Any taxing district that is required to hold a hearing and give public notice of the hearing as provided in this section, and which fails to do so, shall have the validity of all or a portion of the fee increase that it collects be voidable.

The taxing district shall give public notice of its intent to make a decision on a proposed fee increase, that is in excess of five percent (5%) of the amount of fees last collected prior to such decision, or a decision to impose a new fee by giving public notice either by advertising in at least one (1) newspaper as defined in section 60-106, Idaho Code, or by holding three (3) public meetings in three (3) different locations in the district or by a single mailing notice to all district residents, providing that the same information is given and providing the meeting shall be held not less than seven (7) days after mailing of the notice. An advertisement used to satisfy the requirements of this section shall be run once each week for the two (2) weeks preceding the week during which the hearing required by this section will be held. The advertisement shall state that the taxing district will meet on a certain day, time and place fixed in the advertisement, for the purpose of hearing public comments regarding any proposed fee increase beyond the limits prescribed by this section, or imposition of a new fee and to explain the reasons for such action. [I.C., § 63-1311A, as added by 1997, ch. 117, § 36, p. 298; am. 2007, ch. 159, § 1, p. 482.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 159, twice substituted “that is in excess of five percent (5%)” for “that exceeds one hundred five percent (105%).”

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 2 of S.L. 2007, ch. 159 declared an emergency retroactively to January 1, 2007 and approved March 22, 2007.

63-1312. Municipal property taxes — Notification of valuation. — (1) Prior to the fourth Monday of March of the current year the county auditor must notify every taxing district or authority and the state board of education of the total taxable valuation of all the taxable property situated within such districts for the preceding calendar year for the purpose of assisting such governing authorities in their determination of tax rates to be levied for the current year and other informational purposes.

(2) Prior to the first Monday in August the auditor of each county in the state shall notify the state tax commission and the clerk of each taxing unit in his county of the taxable valuation of all the taxable property situated

within that taxing district from the property roll for the current year, from the operating property roll for the previous year, from the prior year's actual or current year's estimated subsequent property roll and missed property roll, and the amount of value subject to occupancy tax notwithstanding exemptions authorized in chapter 6, title 63, Idaho Code, for the previous year.

(3) The auditor shall furnish the valuation from the current operating property roll upon receipt from the state tax commission.

(4) Subsequent to the notification of the county auditor of revenues sufficient to cover expenses as provided in section 50-2903(5), Idaho Code, taxable value as used in this section shall also include the value that exceeds the value of the base assessment roll for the portion of any taxing district within a revenue allocation area. [I.C., § 63-1312, as added by 1996, ch. 98, § 14, p. 308; am. 2002, ch. 143, § 8, p. 394.]

63-1313. Limitation on property taxes — Value of real and personal property — Special tax levies. — (1)(a) Except as provided in section 63-802, Idaho Code, during any one (1) tax year, the maximum amount of all property taxes from all sources on any property subject to appraisal, assessment, and property taxation within the state of Idaho shall not exceed one percent (1%) of the market value for assessment purposes of such property, including the current market values of all residential improvements, notwithstanding any exemption of a portion of such values from property taxation.

(b) The limitation provided for in paragraph (a) of this subsection shall not apply to property taxes or special assessments to pay the principal of and the interest and redemption charges on any indebtedness incurred prior to the time this section becomes effective, nor shall the limitation provided for in paragraph (a) of this subsection apply to property taxes to pay the principal of and the interest and redemption charges on any indebtedness incurred on or after November 7, 1978, as prescribed by the constitution of the state of Idaho, nor shall the limitation provided for in paragraph (a) of this subsection apply to special assessments levied on or after November 7, 1978, as provided by law.

(2) The market value for assessment purposes of real and personal property subject to appraisal by the county assessor shall be determined by the county assessor according to the rules prescribed by the state tax commission, as provided in section 63-208, Idaho Code, but where real property is concerned it shall be the actual and functional use of the real property. All taxable property shall be annually appraised or indexed to reflect that valuation. [I.C., § 63-1313, as added by 1996, ch. 98, § 14, p. 308.]

STATUTORY NOTES

Cross References. — Annual appraisal or indexing, § 63-314.

63-1314. Costs for professional services to be lien on property. — Costs and fees for professional services incurred by the county in the collection of property taxes are a perpetual lien on the property and may be attached to the property taxes, current and delinquent.

Such professional services shall include, but not be limited to, attorney fees and title searches. [I.C., § 63-1314, as added by 1996, ch. 98, § 14, p. 308.]

STATUTORY NOTES

Compiler’s Notes. — Section 20 of S.L. 1996, ch. 98 read: “Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected,

amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code.”

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

CHAPTER 14

ENFORCEMENT — PENALTIES

SECTION.

- 63-1401. Authority of assessor — Duty of assessor.
- 63-1402. Violations.
- 63-1403. Suits by attorney general.

SECTION.

- 63-1404. Compliance of public officers with rules and orders of state tax commission.
- 63-1405. Removal of officers.

63-1401. Authority of assessor — Duty of assessor. — (1) The assessor is hereby authorized to administer oaths to all persons who may be required to swear, and he may examine under oath any person who is required under the provisions of this chapter to list property for appraisal, assessment or taxation, concerning the amount and value of such property, and he may examine under oath any person whom he may suppose to have knowledge of the amount or value of the property of any person refusing to list such property or to verify such list, or whenever the assessor shall be of the opinion that the person listing property for himself or for any other person has not made a complete list of such property. If any person shall refuse to answer under oath any question asked of him by the assessor concerning the amount and value of the property required to be listed by him, the assessor may list and assess such property according to his best judgment and information, but, if any property is willfully concealed, removed, transferred, misrepresented or not listed by the person required to do so, such property, upon discovery, must be appraised, assessed and taxed at two (2) times its value for each year such property has escaped taxation. The county board of equalization may excuse the liability for such penalty upon a proper showing that by good and sufficient cause the requirement to list such property need not be complied with. Any person making a false list, schedule or statement under oath shall be guilty of perjury.

(2) The assessor shall note, at the time of appraisal, all cases where the owner, agent or other person required by this title to list property: refused or failed to make the sworn taxpayer’s declaration required of him; refused

to answer any question asked of him by the assessor in reference to the appraisal of property; was absent or willfully concealed, removed, transferred, misrepresented or failed to list such property. [I.C., § 63-1401, as added by 1996, ch. 98, § 15, p. 308.]

STATUTORY NOTES

Cross References. — Penalty for perjury, § 18-5409. Refusal to list property a misdemeanor, § 18-6301.

63-1402. Violations. — (1) It is a misdemeanor:

- (a) For any assessor to knowingly or willfully assess any property at more or less than market value.
- (b) For any assessor to fail to complete and deliver the real, subsequent or missed property rolls or affidavits within the time prescribed by law.
- (c) For any member of the board of equalization to knowingly or willfully permit any appraisal to stand, or permit any alteration to be made in the real, subsequent or missed property rolls whereby any property is appraised at more or less than market value.
- (d) For any member of the county commissioners to knowingly or willfully permit any unjust, excessive or insufficient county property tax levy to stand.
- (e) For any county officer or any officer of any taxing district to knowingly or willfully make any false statements to the county commissioners in its determination of the amount of property taxes to be levied.
- (f) For any auditor to fail to complete and deliver the property rolls or affidavits within the time prescribed by law.
- (g) For any tax collector to knowingly or willfully fail to mail a property tax notice within the time prescribed by law.
- (h) For any tax collector to knowingly or willfully fail to collect any property tax which has been properly levied.
- (i) For any person to remove from the county or sell or repossess any personal property without the payment of property taxes levied thereon.
- (j) For any treasurer to neglect or refuse to make any payments or settlements within ten (10) days after the time prescribed therefor.
- (k) For any auditor to neglect or refuse to transmit any order or sworn statement within ten (10) days after the time prescribed therefor.
- (l) For any assessor to neglect or refuse to transmit any order or sworn statement within ten (10) days after the time prescribed therefor.
- (m) For any member of the state tax commission to knowingly or willfully permit any unjust appraisal or assessment, or incorrect apportionment of state property taxes to stand or be made.

(2) In addition to criminal penalties which may be imposed under this section:

- (a) The assessor shall be liable upon his official bond for the amount of property tax on any property which he has knowingly or willfully allowed to escape appraisal or on any property on which he has knowingly or willfully entered any untrue or incorrect classification of land or other property upon the property roll.

(b) Any member of the board of equalization shall be liable upon his official bond for the amount of property tax on any property which he has knowingly or willfully allowed to escape assessment and taxation or on any property on which he has knowingly or willfully allowed any untrue or incorrect classification of land or other property to stand.

(c) The tax collector shall be liable upon his official bond for all property taxes which have not been collected or accounted for in his settlement with the county commissioners or county auditor.

(d) The treasurer shall be liable upon his official bond for all payments or settlements which he refuses or neglects to make within ten (10) days after the time prescribed therefor.

(e) The county auditor shall be liable upon his official bond for neglecting or refusing to transmit any order or sworn statement within ten (10) days after the time prescribed therefor and shall forfeit the sum of one thousand dollars (\$1,000). [I.C., § 63-1402, as added by 1996, ch. 98, § 15, p. 308.]

STATUTORY NOTES

Cross References. — Cities cannot levy taxes for cemetery maintenance on property within an existing cemetery district, § 50-224.

Disposition of fines and forfeitures, § 19-4705.

Limitation of actions for wrongful seizure by tax collector, § 5-220.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Assessor's duty.

Construction.

County treasurer as tax collector.

Time limit.

Assessor's Duty.

It is the duty of the taxpayer to furnish the assessor, on demand, the statement on oath and if he neglects or fails to do so, it is the duty of the assessor to assess such taxpayer's property within his jurisdiction, and, in that case, the taxpayer cannot recover taxes paid under protest on such property so assessed. *Erwin v. Hubbard*, 4 Idaho 170, 37 P. 274 (1894).

Construction.

This section should be construed with §§ 19-4101 — 19-4113, providing for removal of civil officers. *Daugherty v. Nagel*, 28 Idaho 302, 154 P. 375 (1915).

County Treasurer as Tax Collector.

While county treasurer is ex officio tax collector, offices are separate and distinct. At all times tax collector has been required to take separate oath and give separate bond and this bond alone is liable for faithful performance of his duties as tax collector. *Freemont County v. Salisbury*, 48 Idaho 465, 285 P. 459 (1929).

Time Limit.

The time limit for an action for delinquent property taxes is found not in this section but in § 5-218 *1*. *Childers v. Wolters*, 115 Idaho 527, 768 P.2d 790 (Ct. App. 1988).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 834-852, 881-890.

C.J.S. — 84 C.J.S., Taxation, § 640 et seq.

A.L.R. — Standing of one taxpayer to com-

plain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

63-1403. Suits by attorney general. — (1) The attorney general of this state is empowered to sue and collect, for and on behalf of any other political subdivision or state of the United States taxes legally due such political subdivision or state provided that the law of such state contains a reciprocal provision by which that state will enforce and collect taxes due this state or its political subdivision.

(2) The attorney general or an appropriate official of any political subdivision of this state may bring suits in the courts of other states to collect taxes legally due this state or any political subdivision thereof. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state under the great seal of the state that such officers have authority to collect the tax is conclusive evidence of such authority. [I.C., § 63-1403, as added by 1996, ch. 98, § 15, p. 308.]

63-1404. Compliance of public officers with rules and orders of state tax commission. — (1) Every public officer shall comply with any lawful order or rule of the state tax commission made pursuant to the provisions of this title.

(2) Every county officer or employee performing related functions shall provide information regarding property rolls and related documents and procedures and parcel numbers to the state tax commission as provided in section 63-219, Idaho Code, may use the computer software prescribed and furnished by the state tax commission, and shall record and transmit information required by the state tax commission in the performance of its duties.

(3) Whenever it appears to the state tax commission that any public officer or employee whose duties relate to the assessment or equalization of assessments of property for taxation has failed to comply with any law relating to such duties, or the rules of the state tax commission made in pursuance thereof, the state tax commission, after a hearing on the facts, may request an order directing the public officer or employee to comply with such law or rule. An order of the state tax commission may require a county to conduct a revaluation of some or all of the property within the county as the state tax commission may find necessary to promote uniformity of taxation within the county. When necessary for the implementation of such an order, the state tax commission is empowered to reconvene a county board of equalization for a period not to exceed ninety (90) days beyond the date otherwise prescribed for the adjournment of such board for the sole purpose of permitting the board to hear and determine protests of valuations resulting from such ordered reappraisal provided that such protests are filed on or before the date otherwise prescribed for the adjournment of the board of equalization and that such extension is necessary for the proper completion of the board's duties. The order may further permit the certification of estimated values by the county to the state tax commission subject to the approval of the tax commission if necessary to permit the board of equalization to properly complete its work and such values, when approved by the tax commission, may be used to set levies if actual values are unavailable on the date prescribed for setting levies.

(4) If such public officer or employee, for a period of ten (10) days after service on him of the state tax commission's order, neglects or refuses to comply therewith, the state tax commission may apply to a judge of the district court of the county in which the public officer holds office for an order, returnable within five (5) days thereof, to compel such public officer or employee to comply with the state tax commission's order, or to show cause why he should not be compelled to do so.

(5) Any order issued by the judge pursuant thereto shall be final; provided however, that any person aggrieved by such order may appeal to the supreme court of the state of Idaho in the manner provided for appeals in other civil actions. An appeal shall not stay any order issued by any judge.

(6) The remedy provided in this section shall be cumulative and shall not exclude the state tax commission from exercising any other power or right delegated to it. [I.C., § 63-1404, as added by 1996, ch. 98, § 15, p. 308.]

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Assessment function of county official.

Contracts for revaluation of real property.

—Indemnity clause.

Assessment Function of County Official.

The reading of the entire Chapter 6 of Title 63 makes it clear that this section involves the assessment function of a county official as distinguished from the equalization process by the state tax commission. Idaho State Tax Comm'n v. Staker, 104 Idaho 734, 663 P.2d 270 (1982).

Contracts for Revaluation of Real Property.

Contracts between county and appraiser for revaluation of county real property for tax purposes were not void as violative of Idaho Const., Art. 8, § 3 which prohibits creation of unlimited county liability without voter approval; the expenditures at issue here were not only ordinary and necessary and autho-

rized by the general laws of the state, but were required and mandated. Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County, 104 Idaho 590, 661 P.2d 756 (1983).

—Indemnity Clause.

Indemnity clause in contract between county and appraiser, which clause relieved appraiser of liability in connection with revaluation of county real property, was not void as against public policy nor did it violate Idaho Const., Art. 8, § 3 prohibiting creation of an unlimited liability on the county without voter approval. Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County, 104 Idaho 590, 661 P.2d 756 (1983).

63-1405. Removal of officers. — Any county officer upon whom any duties devolve under the revenue laws of this state, who willfully neglects or refuses to perform any such duty, may be removed from office in the manner prescribed by law. When proceedings are commenced to remove such officer, the county commissioners, or in case such officer be a commissioner, then the district judge, may suspend such officer from his powers and duties under the revenue laws, and appoint a competent person in his place until a proper tribunal has either removed or acquitted such suspended officer. Any act relating to the appraisal of property, the assessment of property, the levy or collection of property taxes, or the sale of property for nonpayment of property taxes, performed by any such temporary officer, is valid and of the same force and effect as if performed by a duly qualified officer, elected

to such office; provided, that such temporary officer has been bonded, as is required of persons duly elected to such office. [I.C., § 63-1405, as added by 1996, ch. 98, § 15, p. 308.]

STATUTORY NOTES

Cross References. — Removal of civil officers, § 19-4101 et seq.

Compiler's Notes. — Section 20 of S.L. 1996, ch. 98 read: "Section 20. Existing Rules Remain in Effect. All rules heretofore adopted by the state tax commission and in effect on the effective date of this act shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the

commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in section 67-5292, Idaho Code."

Effective Dates. — Section 21 of S.L. 1996, ch. 98 provided that the act shall be in full force and effect on January 1, 1997.

CHAPTER 15

COLLECTION OF TAXES FROM PUBLIC WORKS CONTRACTORS

SECTION.

63-1501. Definitions.

63-1502. Conditions precedent to contract for public works.

63-1503. Contractor for public works to pay or secure taxes — Agreement.

SECTION.

63-1504. Duty of public officers to withhold amount of taxes.

63-1505. Penalty for dereliction of duty.

63-1501. Definitions. — As used in this act, the following terms shall have the following meanings:

"Contracting units" shall include the state or any officer or department thereof, the counties or other subdivisions of the state, and all municipal and quasi-municipal corporations therein.

"Contractor" shall mean any person, firm, copartnership, association, or corporation, foreign or domestic, entering into a contract for the construction, erection, repair, or improvement of any kind or character of public works in this state.

"Taxes" shall mean all taxes, assessments, excises, and license fees authorized to be levied, assessed, and collected under the laws of this state, other than taxes on real property.

"Taxing unit" shall mean the state or any officer or department thereof, the counties or other subdivisions of the state, and all municipal and quasi-municipal corporations therein authorized by law to assess, levy and collect taxes. [1937, ch. 246, § 1, p. 440.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1937, ch. 246 which is compiled as §§ 63-1501 — 63-1505.

63-1502. Conditions precedent to contract for public works. — Before entering into a contract for the construction of any public works in this state, the contracting unit shall require as conditions precedent that the contractor be authorized to do business in this state and that he furnish

satisfactory evidence that he has paid or secured to the satisfaction of the respective taxing units all taxes for which he or his property is liable then due or delinquent. [1937, ch. 246, § 2, p. 440.]

63-1503. Contractor for public works to pay or secure taxes — Agreement. — Every contract for the construction of public works by a contracting unit of this state shall contain substantially the following provisions:

The contractor, in consideration of securing the business of erecting or constructing public works in this state, recognizing that the business in which he is engaged is of a transitory character, and that in the pursuit thereof, his property used therein may be without the state when taxes, excises, or license fees to which he is liable become payable, agrees:

1. To pay promptly when due all taxes, (other than on real property), excises and license fees due to the state, its subdivisions, and municipal and quasi-municipal corporations therein, accrued or accruing during the term of this contract, whether or not the same shall be payable at the end of such term;

2. That if the said taxes, excises, and license fees are not payable at the end of said term, but liability for the payment thereof exists, even though the same constitute liens upon his property, to secure the same to the satisfaction of the respective officers charged with the collection thereof; and

3. That, in the event of his default in the payment or securing of such taxes, excises, and license fees, to consent that the department, officer, board, or taxing unit entering into this contract may withhold from any payment due him hereunder the estimated amount of such accrued and accruing taxes, excises, and license fees for the benefit of all taxing units to which said contractor is liable. [1937, ch. 246, § 3, p. 440.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

63-1504. Duty of public officers to withhold amount of taxes. — Before the state board of examiners, the board of county commissioners, or the board of any municipal or quasi-municipal corporation or other taxing unit in this state, shall approve any claim on account of the construction of public works in this state, it shall require that the claimant furnish evidence that he has paid all taxes, excises, and license fees due to the state and its taxing units, due and payable during the term of the contract for such construction, and that he has secured all such taxes, excises, and license fees liability for the payment of which has accrued during the term of such contract, notwithstanding they may not yet be due or payable. [1937, ch. 246, § 4, p. 440.]

63-1505. Penalty for dereliction of duty. — Any officer of a contracting unit who fails to comply with or violates any of the provisions hereof

shall be liable personally and on his official bond for the amount of any tax loss by any taxing unit incurred as a result of failure to comply with the terms hereof. [1937, ch. 246, § 5, p. 440.]

STATUTORY NOTES

Effective Dates. — Section 6 of S.L. 1937, ch. 246 declared an emergency. Approved March 19, 1937.

CHAPTER 16

PREPAYMENT OF TAXES

SECTION.

63-1601. Declaration of intent.

63-1602. Petition for permission to prepay taxes.

63-1603. Hearing and order.

63-1604. Local impact committee.

SECTION.

63-1605. Local impact fund.

63-1606. Prepayment optional.

63-1607. Credit for prepaid taxes.

63-1608. Lapse of unused credit.

63-1609 — 63-1612. [Repealed.]

63-1601. Declaration of intent. — It is the intent of the legislature to make provisions available for the prepayment of a portion of certain taxpayers' ad valorem taxes to minimize the impact on public facilities caused by new business operations within a county. [I.C., § 63-1601, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-1601—63-1612, which comprised C.S. §§ 3285-3296; am. 1921, ch. 145, § 2, p. 333; am. 1921, ch. 187, § 1, p. 389; am. 1927, ch. 50, § 1, p. 66; am. 1927, ch. 263, §§ 12-16, p. 560; am. 1929,

ch. 263, §§ 16-20, p. 585; am. 1931, ch. 155, §§ 2-4, p. 260; I.C.A., §§ 61-1301—61-1312; am. 1939, ch. 65, § 1, p. 115; am. 1969, ch. 455, §§ 58-61, p. 1205, were repealed by S.L. 1971, ch. 87, § 1.

63-1602. Petition for permission to prepay taxes. — In order to minimize the impact on public facilities as a result of new business operations and to permit affected taxing districts to use prepaid ad valorem taxes for planning, construction, expansion, or operation of public facilities, any taxpayer seeking to prepay ad valorem taxes shall petition the board of county commissioners in the applicable county. The petition, in addition to such information as the taxpayer may choose to present, shall contain the following:

(a) A statement that the taxpayer intends to engage or is engaged in new business operations and that such operations will have an impact on public facilities in the county;

(b) A declaration that the taxpayer has or will have taxable property in the county and taxing districts during the term of the impact period, which shall not exceed ten (10) years;

(c) A request that the taxpayer be allowed to prepay a portion, but not to exceed fifty percent (50%) of the estimated ad valorem taxes that will be due during the first one-half of the term of the impact period, which shall not exceed ten (10) years; and

(d) A request that a local impact committee be organized. [I.C., § 63-1602, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former § 63-1602 was repealed. See Prior Laws, § 63-1601.

63-1603. Hearing and order. — (1) On receipt of a petition from a taxpayer pursuant to section 63-1602, Idaho Code, the board of county commissioners shall:

(a) Within five (5) days of receipt of such petition, forward a copy of the petition to the chairman of the governing board of each taxing district in which any part of the property of the taxpayer is or will be situated during the term of the impact period; and

(b) Within thirty (30) days of receipt of such petition hold one or more public hearings at which the taxpayer, all taxing districts to which the petition was forwarded, and interested persons may appear and be heard relative to the impact on public facilities in such county and the matters contained in the taxpayer's petition.

(2) Within fifteen (15) days after the close of the hearings, the board shall enter an order either granting or denying the petition.

(a) If the petition is denied, the taxpayer may not reapply or file a new petition until the start of the next tax year.

(b) If the petition is granted, the board shall enter an order declaring:

(i) That the taxpayer intends to engage in or is engaged in new business operations in the county and that such operations will have an impact on public facilities in the county;

(ii) That the taxpayer has or will have taxable property in the county and taxing districts during the term of the impact period;

(iii) That the taxpayer be allowed to prepay a portion, but not to exceed fifty percent (50%) of the estimated ad valorem taxes that will accrue during the term of the impact period, and receive ad valorem tax credits for such prepaid taxes, in accordance with the provisions of this chapter; and

(iv) That a local impact committee be created. [I.C., § 63-1603, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former § 63-1603 was repealed. See Prior Laws, § 63-1601.

63-1604. Local impact committee. — If a local impact committee is ordered pursuant to section 63-1603, Idaho Code, the board of county commissioners shall appoint the members of the committee. The committee shall consist of a member of the governing board of each taxing district in which any part of the property of the taxpayer is or will be situated during the term of the impact period, the county assessor, and the chairman of the board of county commissioners, who shall be the permanent chairman of the

local impact committee. The board of county commissioners, with the advice of the committee, shall:

(1) Work with the taxpayer to determine the impact on public facilities for a period of not to exceed ten (10) years;

(2) Develop a plan for construction, expansion, or operation of public facilities for a period of not to exceed ten (10) years;

(3) Estimate the total amount of ad valorem taxes that the taxpayer will become obligated to pay for a period of not to exceed ten (10) years, and the estimated amount of taxes that may be prepaid during the first one-half of the impact period;

(4) Determine the priority of public facilities that are to be funded from prepaid ad valorem taxes, the taxing districts which will receive such prepaid ad valorem taxes, the dollar amount of such taxes, and the taxing districts which need to provide a credit during the term of the impact period to the taxpayer for prepaid ad valorem taxes. [I.C., § 63-1604, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former § 63-1604 was repealed. See Prior Laws, § 63-1601.

63-1605. Local impact fund. — In each county in which a local impact committee is formed, under the provisions of this chapter, there is hereby created and established in the county treasury a local impact fund to which all prepaid ad valorem taxes shall be credited as received.

Moneys in the local impact fund may be expended or transferred to a taxing district only upon the approval of the board of county commissioners with the advice of the local impact committee, any other provisions of law notwithstanding.

The preparation of a budget for the moneys in the fund shall be controlled by the provisions of this chapter, any other provision of law notwithstanding.

The expenditure of moneys from the fund, or the transfer of moneys in the fund to a taxing district, shall be exempt from the provisions of chapter 16, title 31, Idaho Code. [I.C., § 63-1605, as added by 1980, ch. 226, § 1, p. 505; am. 1996, ch. 208, § 15, p. 658; am. 1996, ch. 322, § 58, p. 1029.]

STATUTORY NOTES

Prior Laws. — Former § 63-1605 was repealed. See Prior Laws, § 63-1601.

Amendments. — This section was amended by two 1996 acts, ch. 208, § 15, effective July 1, 1996 and ch. 322, § 58, effective January 1, 1997, which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 208, § 15, in the fourth paragraph deleted “, and from the provisions of section 63-2220, Idaho Code” from the end of the paragraph.

The 1996 amendment, by ch. 322, § 58, in the fourth paragraph deleted “, from the provisions of section 63-923, Idaho Code, and from the provisions of section 63-2220, Idaho Code.” following “title 31, Idaho Code” and deleted a fifth paragraph which read, “The moneys received by any taxing district from the local impact fund shall be exempt from the provisions of sections 63-923 and 63-2220, Idaho Code.”

Effective Dates. — Section 22 of S.L. 1996, ch. 208 declared an emergency and

provided that this section should be in effect July 1, 1996. Approved March 12, 1996.

63-1606. Prepayment optional. — Prepayment of ad valorem taxes under the provisions of this chapter shall be optional and voluntary on the part of the taxpayer, unless an agreement has been entered into with a local impact committee, in which case the terms of the agreement shall be binding. [I.C., § 63-1606, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former § 63-1606 was repealed. See Prior Laws, § 63-1601.

63-1607. Credit for prepaid taxes. — During the last one-half (1/2) of the impact period and for not to exceed three (3) years thereafter, each taxpayer who has prepaid taxes shall be allowed a credit for such taxes paid during the first one-half (1/2) of the impact period. The credit shall be allowed against the actual taxes assessed to the taxpayer by the taxing district which received prepaid taxes from the local impact fund, and shall be calculated to provide an approximately equal credit during each year that the credit is allowed. Any extension of time during which the credit may be allowed shall require the approval of the local impact committee. [I.C., § 63-1607, as added by 1980, ch. 226, § 1, p. 505; am. 1981, ch. 224, § 6, p. 433; am. 1988, ch. 355, § 1, p. 1057; am. 1996, ch. 208, § 16, p. 658; am. 1996, ch. 322, § 59, p. 1029; am. 1997, ch. 117, § 37, p. 298.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts, ch. 208, § 16, effective July 1, 1996 and ch. 322, § 59, effective January 1, 1997, which conflict.

The 1996 amendment, by ch. 208, § 16, deleted a former third sentence which read, "Allowances necessary as a credit for prepaid taxes shall not be included as a part of dollar limitations required by section 63-2220, Idaho Code."

The 1996 amendment, by ch. 322, § 59, in such former third sentence substituted "63-802" for "63-2220".

Effective Dates. — Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-1608. Lapse of unused credit. — If for any reason during the impact period the taxpayer should cease business operations and the credits accumulated for prepaid ad valorem taxes have not been completely set off against taxes due, the balance of the unused credit shall be forfeited, and the county and taxing districts shall be under no obligation to pay off the unused credits. [I.C., § 63-1608, as added by 1980, ch. 226, § 1, p. 505.]

STATUTORY NOTES

Prior Laws. — Former § 63-1608 was repealed. See Prior Laws, § 63-1601.

63-1609 — 63-1612. Report of collections — Rebate — Personal property tax law applicable — Exception. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections were repealed by S.L. 1971, ch. 87, § 1.

CHAPTER 17

TAXATION OF FOREST LANDS AND FOREST PRODUCTS

SECTION.

63-1701. Definitions.

63-1702. Lands of less than five acres.

63-1703. Certain forest lands to be designated for taxation by owner — Limitations.

63-1704. Large-size forest tracts.

SECTION.

63-1705. Taxation of forest lands under the productivity option.

63-1706. Yield tax on applicable forest products.

63-1707. Examination of records.

63-1708. Property exempt from taxation.

63-1701. Definitions. — As used in this chapter, unless the context requires otherwise:

(1) "Average annual net wood production" means the average net usable volume of wood one (1) acre of forest land will grow in one (1) year under average current and actual forest conditions and under current and reasonable management practices for each forest value zone.

(2) "Designation period" means any one (1) ten (10) year period in a sequence of ten (10) year periods which begin January 1, 1983.

(3) "Forest" means forest land and the timber thereon.

(4) "Forest land" means privately owned land being held and used primarily for the continuous purpose of growing and harvesting trees of a marketable species. Having met the above criteria, forest land may be further identified by the consideration of any of the following criteria:

(a) Forest land is land evidenced by present use and silvicultural treatment.

(b) Forest land is land which has a dedicated use that is further evidenced by a forest land management plan that includes eventual harvest of the forest crop.

(c) Forest land is land bearing forest growth or land which has not been converted to another use.

(d) Forest land is land which has had the trees removed by man through harvest, including clear-cuts or by natural disaster, such as but not limited to fire, and which within five (5) years after harvest or initial assessment will be reforested as specified in the forest practices act (chapter 13, title 38, Idaho Code).

(5) "Forest landowner" means the legal entity which holds the property rights under law to the forest land surface.

(6) "Forest products" means any forest crop harvested from forest land.

(7) "Forest products yield tax" means a tax levied on the value of forest products harvested from a parcel as prescribed in sections 63-1703 and 63-1706, Idaho Code.

(8) "Forest value" means the market value for assessment purposes as determined only on the basis of its ability to produce timber, other forest products, and associated agricultural products through the timber productivity valuation process as prescribed by section 63-1705, Idaho Code.

(9) "Stumpage value" means the value of timber, whether standing or downed by other than an intentional act of severance, expressed in terms of dollars per unit of measure.

(10) "Timber" means wood growth, of any species and of any size, standing or down on privately owned lands.

(11) "Bare land value" means the value of forest land exclusive of the value of timber and other products growing or being thereon.

(12) "Stumpage owner" means the legal entity which holds the property rights under law to the timber growing on private lands.

(13) "A substantial change of use" means any use other than as forest land as defined in subsection (4) of this section.

(14) "Deferred taxes" as used in section 63-1703, Idaho Code, means a tax levied to recapture the difference between taxes that were collected on a parcel designated under section 63-1706, Idaho Code, and what would have been collected on the parcel, had it been designated under section 63-1702 or 63-1705, Idaho Code.

(15) "Custodial expense" shall mean those expenses incurred in the maintenance of the forest land and limited to the following:

- (a) Reforestation;
- (b) Road maintenance;
- (c) Managing public use;
- (d) Forest inventory;
- (e) Forest management planning;
- (f) Facility operations and maintenance;
- (g) Environmental analysis and documentation;
- (h) Appeals and litigation;
- (i) Land survey;
- (j) Forest fire suppression;
- (k) Other management expenses; and
- (l) Labor associated with items (a) through (k) of this subsection, but shall not include the salaries or expenses, or any portion thereof, of any person or officer not directly engaged in the management of the forest land.

(16) "CFTM" means the committee on forest land taxation methodologies as provided in section 63-1705, Idaho Code. [I.C., § 63-1701, as added by 1982, ch. 123, § 5, p. 349; am. 1989, ch. 235, § 1, p. 572; am. 1992, ch. 18, § 1, p. 52; am. 1994, ch. 370, § 1, p. 1188; am. 2005, ch. 24, § 1, p. 74.]

STATUTORY NOTES

Cross References. — Stumpage districts, ch. 455, § 83, effective January 1, 1970.
§§ 38-1001 — 38-1027.

Prior Laws. — Former §§ 63-1701—63-1707 which comprised C.S., §§ 3297-3303; am. 1927, ch. 84, § 1, p. 102; I.C.A., §§ 61-1401—61-1407, were repealed by S.L. 1969, ch. 455, § 83, effective January 1, 1970. Another former §§ 63-1601 — 63-1612 which comprised C.S., §§ 3285-3296; am. 1921, ch. 145, § 2, p. 333; am. 1921, ch. 187, § 1, p. 389; am. 1927, ch. 50, § 1, p. 66; am. 1927, ch. 263, §§ 12-16, p. 560; am. 1929, ch.

263, §§ 16-20, p. 585; am. 1931, ch. 155, §§ 2-4, p. 260; I.C.A., §§ 61-1301 — 61-1312; am. 1939, ch. 65, § 1, p. 115; am. 1969, ch. 455, §§ 58-61, p. 1205 were repealed by S.L. 1971, ch. 87, § 1.

Effective Dates. — Section 3 of S.L. 2005, ch. 24 declared an emergency retroactively to January 1, 2005. Approved March 1, 2005.

63-1702. Lands of less than five acres. — Land parcels of less than five (5) contiguous acres must be appraised, assessed and taxed as real property, without regard to its ability to produce timber or forest products. Buildings and other improvements located on forest lands of less than five (5) contiguous acres shall be appraised, assessed and taxed as provided by applicable laws, rules and regulations. [I.C., § 63-1702, as added by 1982, ch. 123, § 5, p. 349.]

STATUTORY NOTES

Prior Laws. — Former § 63-1702 was repealed. See Prior Laws, § 63-1701.

63-1703. Certain forest lands to be designated for taxation by owner — Limitations. — For the purposes of appraisal, assessment and taxation under the provisions of this chapter, all forest lands in parcels of five (5) or more acres but less than five thousand (5,000), whether contiguous or not, as long as such parcels are held in common ownership, must be designated by the forest landowner to be subject to the provisions of either subsection (a) or (b) of this section. A forest landowner cannot have parcels designated under the provisions of both subsections (a) and (b) of this section at one (1) time. If the forest landowner fails to make a designation, his forest lands shall be subject to appraisal, assessment and taxation under the provisions of section 63-1702, Idaho Code. Once a designation is made by the forest landowner, such designation must remain in effect until the designation period expires, unless the forest lands are transferred to another owner using a different taxing category; in such case, the taxing category of the transferred forest lands shall be the same as that maintained by the new owner.

A forest landowner may change the designation of all forest lands in common ownership at the end of any designation period, subject to the recapture of any deferred taxes due as a result of such change. After January 1 and by December 31 of the tenth year of each designation period the forest landowner must notify the county assessor of any change in forest land designation. Failure to notify the county assessor will result in the continuation of the landowner's present designation until the end of the next designation period.

Any substantial change in the use of forest lands not conforming with the definition of forest land in section 63-1701, Idaho Code, during such ten (10) year period under the designations made in subsection (a) or (b) shall be reported by the landowner to the county assessor within thirty (30) days of the change in use. Upon notification of the change in use, the assessor shall appraise, assess and tax those acres as provided by applicable laws and rules. Failure to notify the assessor of the change in use when forest lands

have been designated as subject to the provisions of subsection (a) or (b) shall cause forfeiture of such designation, and cause that property to be appraised, assessed and taxed as provided in section 63-1702, Idaho Code.

Forest lands designated for assessment pursuant to the provisions of section 63-1706, Idaho Code, shall be subject to the recapture of deferred taxes upon removal of such designation, a substantial change in use, or ownership transfer, except that there shall be no recapture initiated upon ownership transfer of forest lands designated as subject to the provisions of section 63-1706, Idaho Code, to a landowner with forest lands already designated as subject to the provisions of section 63-1706, Idaho Code, prior to the transfer, or who so designates his lands to be subject to the provisions of section 63-1706, Idaho Code. In the event payment is offered or made, it shall be accepted by the county treasurer and applied in the manner of payment of other property tax.

The dollar amount of deferred taxes subject to recapture shall be determined by the county assessor by applying current tax levies against the current values that would have been in effect if the lands were subject to appraisal and assessment during the current year under the provisions of section 63-1705, Idaho Code, if there has been a change in ownership or a removal of designation, or section 63-1702, Idaho Code, if there has been a change in use with no change in ownership, which amount shall be multiplied by the number of years that the lands have been subject to the designation under section 63-1706, Idaho Code. The amount of the deferred tax shall accrue through designation periods, up to a maximum of ten (10) years, and shall apply to the most recent ten (10) years in which the parcel has been designated under the provisions of section 63-1706, Idaho Code. A credit shall be allowed for taxes actually paid under the provisions of section 63-1706, Idaho Code, for an identical ten (10) year period, up to the total amount of the deferred taxes. All deferred amounts shall be a lien against the land. Deferred tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Deferred tax amounts shall be supplied by the county assessor to the county treasurer by May 15 of the year following conveyance or within thirty (30) days of removal of designation, or of learning of a change in use. All deferred tax amounts shall be due and payable to the county treasurer on demand and shall become delinquent if not paid by the demand due date specified by the county treasurer on the forms prescribed by the state tax commission. If the deferred tax is not paid as provided above, the payment becomes delinquent and subject to late charges, and interest in the amounts provided in sections 63-201(7) and 63-1001, Idaho Code, and subject to collection in the manner as set forth in chapter 10, title 63, Idaho Code. Estimated deferred tax amounts may be held by the county treasurer in a tax anticipation account from the date of conveyance until June 1 of the year following conveyance.

The county treasurer shall cause the deferred taxes and any penalty and interest paid pursuant to the provisions of this section to be apportioned to the various taxing authorities within which the property subject to the tax is located in the same manner as property taxes.

(a) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1705, Idaho Code, by

filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1705, Idaho Code, shall become effective the first day of January following the year of designation.

(b) A forest landowner may choose to have his forest land assessed, appraised and taxed under the provisions of section 63-1706, Idaho Code, by filing such choice with the county assessor on a form prescribed by the state tax commission. Designation filed pursuant to section 63-1706, Idaho Code, shall become effective the first day of January following the year of designation.

(c) All forest products or timber harvested from investment lands not designated as subject to the provisions of section 63-1702, 63-1705 or 63-1706, Idaho Code, and delivered to a point of utilization as logs or semiprocessed forest products (except those forest products harvested for the domestic use of the landowner under the provisions of section 63-1708, Idaho Code) shall be subject to the yield tax at the time of harvest in the same manner provided for in section 63-1706, Idaho Code. [I.C., § 63-1703, as added by 1982, ch. 123, § 5, p. 349; am. 1984, ch. 237, § 1, p. 566; am. 1992, ch. 18, § 2, p. 52; am. 1994, ch. 370, § 2, p. 1188; am. 1995, ch. 90, § 1, p. 259; am. 1996, ch. 322, § 60, p. 1029; am. 1996, ch. 431, § 1, p. 1464; am. 2004, ch. 183, § 1, p. 572.]

STATUTORY NOTES

Prior Laws. — Former § 63-1703 was repealed. See Prior Laws, § 63-1701.

Amendments. — This section was amended by two 1996 acts — ch. 322, § 60, effective January 1, 1997, and ch. 431, § 1, effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 322, § 60, in the fifth paragraph in the eighth sentence substituted “late charges” for “a penalty” fol-

lowing “delinquent and subject to”, substituted “sections 63-201(6) and 63-1001” for “section 63-1102” following “amounts provided in”; and substituted “chapter 10, title 63” for “sections 63-1123 and 63-1117” following “as set forth in”.

The 1996 amendment, by ch. 431, § 1, in the first paragraph in the first sentence substituted “five thousand (5,000)” for “two thousand (2,000)” following “but less than”.

63-1704. Large-size forest tracts. — Tracts of forest lands which consist of five thousand (5,000) or more acres, whether contiguous or not, so long as such tracts are held in common ownership, must be appraised, assessed and taxed as real property as provided in section 63-1705, Idaho Code. [I.C., § 63-1704, as added by 1982, ch. 123, § 5, p. 349; am. 1996, ch. 431, § 2, p. 1464.]

STATUTORY NOTES

Prior Laws. — Former § 63-1704 was repealed. See Prior Laws, § 63-1701.

63-1705. Taxation of forest lands under the productivity option. — (1) In order to encourage private forest landowners to retain and improve their holdings of forest lands and to promote better forest management, forest lands subject to this option shall be appraised, assessed and taxed as

real property under the provisions of this section.

(2) The forest land value shall be determined by the timber productivity valuation process, as provided for in the committee on forest land taxation methodologies, User's Guide to the Timber Productivity Option's Valuation Method — 2005 (Schlosser, January 1, 2005, Moscow, Idaho), referred to in this chapter as the "user's guide," on file with the Idaho state tax commission, available on the website of the Idaho state tax commission, and which shall be made available in the office of each county assessor, which values the net wood production over a reasonable rotation period plus other agricultural-related income, if any, less annualized custodial expenses as defined in section 63-1701, Idaho Code. Pursuant to the provisions of this section, the inventory of forest products shall not be included as part of the valuation of the forest land as provided in section 63-602W, Idaho Code. The state tax commission shall promulgate rules relating to the timber productivity valuation process, including custodial expenses, as provided for in the user's guide and the provisions of this chapter.

(3) Effective January 1, 2005, the market value for assessment purposes shall be determined annually by the county assessor using the timber productivity valuation process developed by the CFTM, and as further prescribed in rule. Notwithstanding any other provision of law, the state tax commission is authorized to cite the user's guide in its rules and shall:

(a) Divide the state into appropriate forest valuation zones, with each zone designated so as to recognize the uniqueness of marketing areas, timber types, growth rates, access, operability, and other pertinent factors of that zone;

(b) Establish a uniform system of forest land classification which considers the productive capacity of the soil to grow forest products and furnish other associated agricultural uses;

(c) Provide for the annual input to the timber productivity valuation process including the stumpage value, rotation length, mean annual increment, guiding discount rate, annualized custodial expenses, appropriate property tax rates, and real price appreciation rate of stumpage according to the user's guide. The guiding discount rate and the real price appreciation rate for timber products shall remain constant at four percent (4%) and one and one-quarter percent (1.25%) respectively, until January 1, 2012;

(d) Conduct a forest management cost study every five (5) years to determine the annualized custodial expenses to be used in the timber productivity valuation process as provided in the user's guide. The first study shall be conducted in 2005 and evaluated by the CFTM, with the results incorporated into the user's guide timber productivity valuation process on January 1, 2007. The forest management cost study shall be funded by the state tax commission, subject to appropriation by the legislature; and

(e) Provide for any additional data as needed.

(4) The state tax commission shall by March 1 of each year, furnish all input for the timber productivity valuation process to the county assessor.

(5) Stumpage values shall be based upon the preceding five (5) year rolling average value of timber harvested within the forest value zone from

state timber sales and/or the best available data for the same five (5) year period. Average agricultural-related income and the average expense component for each forest value zone shall be determined for the same time period as the period used to determine average stumpage values.

(6) Forest lands upon which, at any time after January 1, 1982, the trees are destroyed by fire, disease, insect infestation or other natural disaster such that the lands affected will not meet minimum stocking requirements under rules adopted pursuant to chapter 13, title 38, Idaho Code, shall be eligible for a reduction in value for the first ten (10) property tax years following the loss. The amount of reduction shall be determined by dividing the average age of the trees destroyed by the rotation age for the specific forest productivity class appropriate for the affected acres. In no instance shall the annual reduction exceed eighty percent (80%) of the original forest value per year. In order to obtain a reduction, the landowner shall, on or before January 1, following the destruction, make written application to the assessor indicating the legal description of the lands in question and stating all pertinent facts. The assessor may investigate the facts and may request assistance from the state tax commission in performing such investigations. If the requirements are met, such forest lands shall be assessed and taxed on the reduced basis herein provided.

(7) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable laws and rules.

(8) Effective January 1, 2004, there is created within the Idaho state tax commission the CFTM. The membership of the CFTM shall be:

- (a) A nonvoting chairman who shall be the member of the Idaho state tax commission assigned to property tax matters;
- (b) Four (4) members selected from the membership of the intermountain forest association;
- (c) One (1) member selected from the membership of the Idaho forest owners' association;
- (d) Five (5) members selected from the membership of the Idaho association of counties; and
- (e) The state superintendent of public instruction or his/her designee, in a nonvoting capacity.

The CFTM may retain a forest economist selected by a majority of its members to advise the CFTM.

The costs of each CFTM member shall be borne by the respective member. The fees and costs of the forest economist shall be borne as determined by the CFTM.

The CFTM may prepare and deliver written reports to the house of representatives revenue and taxation and senate local government and taxation committees of its findings and recommendations for legislation as the need may arise. The CFTM may meet periodically as determined by its chairman or the CFTM. [I.C., 63-1705, as added by 1982, ch. 123, § 5, p. 353; am. 1984, ch. 237, § 2, p. 568; am. 1996, ch. 322, § 61, p. 1090; am. 1998, ch. 198, § 1, p. 711; am. 2000, ch. 156, § 2, p. 397; am. 2005, ch. 24, § 2, p. 74.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2000, ch. 156 declared an emergency retroactively to January 1, 2000 and approved April 3, 2000.

Section 2 of S.L. 1998, ch. 198 provided this

act shall be in full force and effect on and after January 1, 1999.

Section 3 of S.L. 2005, ch. 24 declared an emergency retroactively to January 1, 2005. Approved March 1, 2005.

63-1706. Yield tax on applicable forest products. — (1) All forest lands designated by the owner to be subject to the provisions of section 63-1703(b), Idaho Code, shall be appraised, assessed and taxed according to the provisions of this section.

(2) Forest lands held in private ownership and designated by the owner to be subject to the provisions of this section for property taxation shall be valued by the county assessor as real property at rates which reflect only bare forest land value as determined under rules of the state tax commission.

(3) All timber severed from lands subject to the provisions of this section and delivered to a point of utilization as logs or semiprocessed forest products, shall be subject to a forest products yield tax. This yield tax is in lieu of and replacement for, and not in addition to, property taxes on timber.

(4) The yield tax rate shall be three percent (3%) of stumpage value as determined by the state tax commission. In establishing stumpage values, the state tax commission shall:

(a) Divide the state into appropriate stumpage value zones, with each zone designated so as to recognize the uniqueness of timber marketing areas.

(b) By November 1, set stumpage values by zone for each species and/or product, for use in the reporting and payment of yield taxes for timber severed during the following calendar year. Stumpage values shall be based on a five (5) year rolling average value of comparable timber harvested from state timber sales within the stumpage value zone and/or the best available data for the same five (5) year period.

(5) Report and payment of yield taxes become the direct liability and responsibility of the landowner at the time of severance. At the time of severance the yield taxes become a perpetual lien on the real and personal property of the landowner. Yield tax amounts shall be calculated by the county assessor on forms prescribed by the state tax commission. Yield tax amounts shall be supplied by the county assessor to the county tax collector on or before November 15 for timber that was severed from January 1 through June 30, with payments due and payable on or before December 20. If the taxes due for said period are not paid on or before December 20, the payment becomes delinquent and subject to late charges and interest in the amount provided in sections 63-201 and 63-1001 or 63-904, Idaho Code, calculated from the following January 1. Yield tax amounts shall be supplied by the county assessor to the county tax collector on or before May 15 for timber severed from July 1 through December 31 in the year following severance with payments due on or before June 20 in the year following severance. If the yield taxes due for said period are not paid on or before June 20, the payment becomes delinquent and subject to late charges and

interest in the amount provided in sections 63-201 and 63-1001 or 63-904, Idaho Code, calculated from the following July 1. Delinquent yield taxes shall remain a lien against the land from which the timber was harvested and against any other real and personal property of the landowner who owned the land at the time of severance. To collect delinquent yield taxes, the treasurer may use either the personal or real property collection procedures provided in title 63, Idaho Code.

(6) All yield tax revenues and any late charges or interest thereon shall be apportioned among the several county funds and taxing districts as provided for the apportionment of property taxes.

(7) The party utilizing logs or semiprocessed forest products as raw materials shall be required to report the quantity, species and source of all such materials to the Idaho department of lands. Such report shall be structured to comply with and act as a simultaneous report of data already required under the provisions of section 38-122, Idaho Code. The report format shall include the identification of the forest landowner at the source, legal description of the source, timber or product owner at time of severance, harvester and volume of forest products severed. The Idaho department of lands shall deliver to the various county assessors without fee, copies of these reports as they are available. In the event the point of utilization lies out of the state or a report is not required under the provisions of section 38-122, Idaho Code, the timber owner at time of severance shall be responsible for the reporting of the above-stated data to the department of lands.

(8) If reports required by this section are found to be intentionally false or when appropriate reports are not made, the assessor shall value the forest crop harvested, based on the best available estimates.

(9) Not reporting timber or forest products delivery or receipt as required by this section shall be deemed a misdemeanor.

(10) Buildings and other improvements, other than roads, located on forest lands shall be appraised, assessed and taxed as provided by applicable law and rules. [I.C., § 63-1706, as added by 1982, ch. 123, § 5, p. 349; am. 1987, ch. 205, § 1, p. 431; am. 1994, ch. 370, § 3, p. 1188; am. 1996, ch. 98, § 17, p. 308; am. 1996, ch. 132, § 1, p. 454; am. 1997, ch. 117, § 38, p. 298.]

STATUTORY NOTES

Cross References. — Stumpage value defined, § 63-1701.

Prior Laws. — Former § 63-1706 was repealed. See Prior Laws, § 63-1701.

Amendments. — This section was amended by two 1996 acts — ch. 98, § 17, effective January 1, 1997, and ch. 132, § 1, effective July 1, 1996 — which conflicted to a certain extent. The conflict was corrected by the insertion of bracketed material in subsection (5). The brackets were removed in 1997, when the section was amended to cure the 1996 legislative conflict.

The 1996 amendment, by ch. 98, § 17, in

subsection (2) substituted “property” for “ad valorem” following “provisions of this section”; in subsection (3) substituted “property” for “ad valorem” following “in addition to,”; in subsection (5) in the second sentence added “perpetual” following “shall constitute”, in the fourth sentence substituted “tax collector” for “treasurer” following “assessor to the county”, in the fifth sentence substituted “late charges” for “a penalty” following “delinquent and subject to”, substituted “sections 63-201 and 63-1001” for “63-1102” following “provided in”, in the sixth sentence substituted “tax collector” for “treasurer” following “asses-

sor to the county”, in the seventh sentence added “yield” following “If the”, substituted “late charges” for “a penalty” following “delinquent and subject to”, substituted “sections 63-201 and 63-1001” for “section 63-1102” preceding “Idaho Code or,” and deleted a former eighth sentence which read, “If December 20 or June 20 falls on a Saturday, Sunday or holiday, any payment required in the provisions of this section shall be payable on the next regular workday following December 20 or June 20.”; and in subsection (6) substituted “late charges” for “penalty” following “tax revenues and any” and “property” for “ad valorem” following “for the apportionment”.

The 1996 amendment, by ch. 132, § 1, in subsection (5) in the first sentence substituted “become” for “is” following “Report and pay-

ment of yield taxes”, in the second sentence substituted “At the time of severance” for “In the event of nonpayment” at the beginning of the sentence, “become” for “due shall constitute”, and “real and personal property” for “assets” following “lien on the”, in the fifth and seventh sentences added “or 63-1302” preceding “Idaho Code”, and added the present eighth and ninth sentences.

Effective Dates. — Section 4 of S.L. 1994, ch. 370, declared an emergency and provided this act shall be in full force and effect on and after April 7, 1994, and retroactively to January 1, 1994. Approved April 7, 1994.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-1707. Examination of records. — In order to properly administer the provisions of this chapter, the state tax commission shall have the right at reasonable times to examine the books, accounts and records of the landowner, timber owner or forest products owner at the time of severance or harvest, or party utilizing the logs or other forest products at the time of severance or harvest as necessary to verify the reports required under the provisions of this chapter and shall have the right to examine the source land. [I.C., § 63-1707, as added by 1982, ch. 123, § 5, p. 349.]

STATUTORY NOTES

Prior Laws. — Former § 63-1707 was repealed. See Prior Laws, § 63-1701.

63-1708. Property exempt from taxation. — The following property is exempt from the yield tax imposed by section 63-1706, Idaho Code: Christmas trees, annual forest crops to include nuts, berries, foliage, cones and other forest products harvested for domestic use of the landowner; provided, that the taxes exempted from any one (1) ownership shall not exceed twenty-five dollars (\$25.00) in any one (1) year. [I.C., § 63-1708, as added by 1982, ch. 123, § 5, p. 349.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1982, ch. 123 read: “This act shall be in full force and effect on and after January 1, 1983, except that the state tax commission is

hereby authorized and directed to take all necessary actions prior to January 1, 1983, to adopt rules and regulations implementing the provisions of this act.”

CHAPTER 18

MONEYED CAPITAL IN COMPETITION WITH BANKS — ASSESSMENT

SECTION.

63-1801 — 63-1807. [Repealed.]

63-1801 — 63-1807. Assessment of moneyed capital in competition with banks. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1929, ch. 252, §§ 1-7, p. 512; I.C.A., §§ 61-1501 — 61-1507, were re-

pealed by S.L. 1969, ch. 455, § 83, effective January 1, 1970.

CHAPTER 19

EQUALIZATION OF ASSESSMENT OF PERSONAL PROPERTY

SECTION.

63-1901 — 63-1911. [Repealed.]

63-1901 — 63-1911. Equalization of Assessment of Personal Property. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

The following sections comprised former chapter 19 of Title 63 and were repealed by S.L. 1996, ch. 98, § 1:

63-1901, which comprised 1913, ch. 58, § 179, p. 173; am. 1917, ch. 55, § 1, subd. 178, p. 126; reen. C.L. 133:178; am. 1919, ch. 75, § 24, p. 268; C.S., § 3304; am. 1927, ch. 233, § 2, p. 345; I.C.A., § 61-1601; am. 1974, ch. 33, § 2, p. 985.

63-1902, which comprised C.S., § 3304-A, as added by 1927, ch. 233, § 3, p. 345; I.C.A., § 61-1602; am. 1980, ch. 350, § 26, p. 887.

63-1903, which comprised C.S., § 3304-B, as added by 1927, ch. 233, § 4, p. 345; I.C.A., § 61-1603.

63-1904, which comprised 1913, ch. 58, § 180, p. 173; am. 1917, ch. 55, § 1, subd. 179, p. 126; reen. C.L. 133:179; am. 1919, ch. 75, § 25, p. 268; C.S., § 3305; am. 1931, ch. 104, § 1, p. 185; I.C.A., § 61-1604; am. 1969, ch. 455, § 62, p. 1205; am. 1974, ch. 33, § 3, p. 985; am. 1976, ch. 209, § 1, p. 768; am. 1989, ch. 232, § 16, p. 562.

63-1905, which comprised 1913, ch. 58, § 181, p. 173; am. 1917, ch. 55, § 1, subd. 180, p. 126; reen. C.L. 133:180; am. 1919, ch. 75, § 26, p. 268; C.S., § 3306; I.C.A., § 61-1605; am. 1965, ch. 312, § 24, p. 849; am. 1969, ch. 455, § 63, p. 1205.

63-1906, which comprised 1913, ch. 58, § 182, p. 173; am. 1917, ch. 55, § 1, subd. 181, p. 126; reen. C.L. 133:181; am. 1919, ch. 75, § 27, p. 269; C.S., § 3307; I.C.A., § 61-1606; am. 1965, ch. 312, § 25, p. 849; am. 1969, ch. 455, § 64, p. 1205.

63-1907, which comprised 1913, ch. 58, § 183, p. 173; am. 1917, ch. 55, § 1, subd. 182, p. 126; reen. C.L. 133:182; am. 1919, ch. 75, § 28, p. 269; C.S., § 3308; I.C.A., § 61-1607; am. 1969, ch. 455, § 65, p. 1205.

63-1908, which comprised 1913, ch. 58, § 184, p. 173; am. 1917, ch. 55, § 1, subd. 183, p. 126; reen. C.L. 133:183; C.S., § 3309; I.C.A., § 61-1608; am. 1965, ch. 312, § 26, p. 849.

63-1909, which comprised 1913, ch. 58, § 185, p. 173; substantially reen. 1917, ch. 55, § 1, subd. 184, p. 126; reen. C.L. 133:184; C.S., § 3310; I.C.A., § 61-1609; am. 1957, ch. 155, § 7, p. 257; am. 1965, ch. 312, § 27, p. 849; am. 1971, ch. 54, § 1, p. 126; am. 1989, ch. 232, § 17, p. 562; am. 1995, ch. 80, § 1, p. 209.

63-1910, which comprised 1913, ch. 58, § 186, p. 173; reen. 1917, ch. 55, § 1 subd. 185, p. 126; reen. C.L. 133:185; C.S., § 3311; I.C.A., § 61-1610; am. 1995, ch. 80, § 2, p. 209.

63-1911, which comprised 1913, ch. 58, § 187, p. 173; reen. 1917, ch. 55, § 1 subd. 186, p. 126; reen. C.L. 133:186; C.S., § 3312; I.C.A., § 61-1611.

CHAPTER 20

SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES

SECTION.

63-2001 — 63-2008. [Repealed.]

63-2001 — 63-2008. Seizure and Sale of Personal Property for Taxes. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

The following sections comprised former chapter 20 of Title 63, and were repealed by S.L. 1996, ch. 98, § 1:

63-2001, which comprised (R.C., § 1777) 1913, ch. 58, § 188, p. 173; am. 1917; am. 1917, ch. 55, § 2, subd. 188, p. 126; reen. C.L. 133:188; am. 1919, ch. 75, § 29, p. 270; C.S., § 3313; I.C.A., § 61-1701; am. 1969, ch. 455, § 66, p. 1205.

63-2002, which comprised (See R.C., §§ 1778, 1779) 1913, ch. 58, § 189, p. 173; am. 1917, ch. 55, § 2, subd. 189, p. 126; reen. C.L. 133:189; am. 1919, ch. 75, § 30, p. 270; C.S., § 3314; I.C.A., § 61-1702.

63-2003, which comprised (See R.C., § 1780) 1913, ch. 58, § 190, p. 173; am. 1917, ch. 55, § 2, subd. 190, p. 126; reen. C.L. 133:190; am. 1919, ch. 75, § 31, p. 270; C.S., § 3315; I.C.A. § 61-1703; am. 1969, ch. 455, § 67, p. 1205.

63-2004, which comprised (See R.C.,

§ 1781) 1913, ch. 58, § 191, p. 173; am. 1917, ch. 55, § 2, subd. 191, p. 126; reen. C.L. 133:191; am. 1919, ch. 75, § 32, p. 270; C.S., § 3316; I.C.A., § 61-1704; am. 1969, ch. 455, § 68, p. 1205.

63-2005, which comprised 1913, ch. 58, § 192, p. 173; am. 1917, ch. 55, § 2, subd. 192, p. 126; reen. C.L. 133:192; am. 1919, ch. 75, § 33, p. 270; C.S., § 3317; I.C.A., § 61-1705; am. 1969, ch. 455, § 69, p. 1205.

63-2006, which comprised 1913, ch. 58, § 193, p. 173; am. 1917, ch. 55, § 2, subd. 193, p. 126; reen. C.L. 133:193; am. 1919, ch. 75, § 34, p. 270; C.S., § 3318; I.C.A., § 61-1706; am. 1969, ch. 455, § 70, p. 1205.

63-2007, which comprised (See R.C., §§ 1782, 1783) 1913, ch. 58, § 194, p. 173; am. 1917, ch. 55, § 2, subd. 194, p. 126; reen. C.L. 133:194; C.S., § 3319; I.C.A., § 61-1707.

63-2008, which comprised 1913, ch. 58, § 195, p. 173; am. 1917, ch. 55, § 2, subd. 195, p. 126; reen. C.L. 133:195; am. 1919, ch. 75, § 35, p. 271; C.S., § 3320; I.C.A., § 61-1708; am. 1969, ch. 455, § 71, p. 1205.

CHAPTER 21

SETTLEMENT OF REVENUE OFFICERS

SECTION.

63-2101 — 63-2108. [Repealed.]

63-2101 — 63-2108. Settlement of revenue officers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

The following sections comprised former chapter 21 of Title 63, and were repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997:

63-2101, which comprised S.L. 1913, ch. 58, § 198, p. 173; am. 1917, ch. 55, § 3, part of subd. 198, p. 126; reen. C.L. 133:198; am. 1919, ch. 75, § 38, p. 271; C.S., § 3323; am. 1927, ch. 263, § 17, p. 560; am. 1929, ch. 263,

§ 21, p. 585; I.C.A., § 61-1801, was repealed by S.L. 1969, ch. 455, § 83 and also repealed by S.L. 1996, ch. 98, § 1.

63-2102, which comprised 1913, ch. 58, § 198, p. 173; am. 1917, ch. 55, § 3, part of subd. 198, p. 126; compiled and reen. C.L. 133:198a; am. 1919, ch. 75 § 39, p. 272; C.S., § 3324; I.C.A., § 61-1802; am. 1969, ch. 455, § 72, p. 1205.

63-2103, which comprised 1913, ch. 58, § 199, p. 173; C.L. 133:199; am. 1919, ch. 75, § 40, p. 272; C.S., § 3325; I.C.A., § 61-1803;

am. 1969, ch. 455, § 73, p. 1205.

63-2104, which comprised 1913, ch. 58, § 200, p. 173; reen. 1917, ch. 55, § 3, subd. 200, p. 126; reen. C.L. 133:200; C.S., § 3326; am. 1925, ch. 169, § 1, p. 307; I.C.A., § 61-1804; am. 1953, ch. 28, § 2, p. 45; am. 1955, ch. 158, § 2, p. 313; am. 1969, ch. 455, § 74, p. 1205; am. 1971, ch. 52, § 1, p. 123; am. 1989, ch. 13, § 1, p. 13.

63-2105, which comprised 1913, ch. 58, § 201, p. 173; am. 1917, ch. 55, § 3, subd. 201, p. 126; compiled and reen. 133:201; C.S., § 3327; I.C.A., § 61-1805; am. 1969, ch. 455, § 75, p. 1205.

63-2106, which comprised 1913, ch. 58, § 202, p. 173; reen. 1917, ch. 55, § 3, subd. 202, p. 126; reen. C.L. 133:202; am. 1919, ch. 75, § 41, p. 273; C.S., § 3328; I.C.A., § 61-1806.

63-2107, which comprised 1913, ch. 58, § 203, p. 173; am. 1917, ch. 55, § 3, subd. 203, p. 126; reen. C.L. 133:203; C.S. § 3329; I.C.A., § 61-1807.

63-2108, which comprised 1913, ch. 58, § 204, p. 173; reen. 1917, ch. 55, § 3, subd. 204, p. 126; reen. C.L. 133:204; C.S., § 3330; I.C.A., § 61-1808.

CHAPTER 22

MISCELLANEOUS PROVISIONS OF TAX LAW

63-2201 — 63-2226. Miscellaneous Provisions of tax law. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

The following sections comprised former chapter 22 of Title 63, and were repealed by S.L. 1996, ch. 98, § 1:

63-2201, which comprised 1913, ch. 58, § 205, p. 173; compiled and reen. C.L. 133:205; C.S., § 3331; I.C.A., § 61-1901.

63-2201A, which comprised I.C., § 63-2201A, as added by 1980, ch. 290, § 2, p. 758; am. 1988, ch. 201, § 3, p. 379; am. 1996, ch. 184, § 2, p. 580.

63-2202, which comprised (See R.C., § 1791) 1913, ch. 58, § 206, p. 173; reen. C.L. 133:206; am. 1919, ch. 75, § 42, p. 273; C.S., § 3332; I.C.A., § 61-1902; am. 1933, ch. 198, § 1, p. 392; am. 1993, ch. 266, § 1, p. 898.

63-2202A, which comprised I.C., § 63-2202A, as added by 1990, ch. 306, § 1, p. 843; am. 1996, ch. 208, § 17, p. 658.

63-2203, which comprised C.S., § 3332-A, as added by S.L. 1925, ch. 193, § 1, p. 357; I.C.A., § 61-1903.

63-2203A, which comprised I.C., § 63-2203A, as added by 1990, ch. 19, § 1, p. 31.

63-2204, which comprised R.S., § 1704; reen. 1901, p. 233, § 171; reen. R.C., § 1788; am. 1913, ch. 58, § 207, p. 173; reen. C.L. 133:207; C.S., § 3333; I.C.A., § 61-1904.

63-2205, which comprised 1913, ch. 58, § 208, p. 173; reen. C.L. 133:208; C.S., § 3334; I.C.A., § 61-1905; am. 1971, ch. 54, § 2, p. 126.

63-2206, which comprised 1913, ch. 58, § 209, p. 173; reen. C.L. 133:209; C.S., § 3335; I.C.A., § 61-1906.

63-2207, which comprised 1913, ch. 58,

§ 210, p. 173; compiled and reen. C.L. 133:210; C.S., § 3336; I.C.A., § 61-1907; am. 1969, ch. 255, § 3, p. 787.

63-2208, which comprised 1913, ch. 58, § 211, p. 173; compiled and reen. C.L. 133:211; C.S., § 3337; I.C.A., § 61-1908.

63-2209 — Based upon 1912, ch. 8, § 28, p. 44; 1913, ch. 58, § 213, p. 173; am. 1917, ch. 55, § 4, p. 126; am. 1917, ch. 109, § 3, p. 388; am. 1917, ch. 151, § 7, p. 477; compiled and reen. C.L. 133:212; C.S., § 3338; I.C.A., § 61-1909.

63-2210, which comprised 1919, ch. 73, § 1, p. 250; C.S., § 3339; I.C.A., § 61-1910; am. 1949, ch. 118, § 1, p. 211; am. 1951, ch. 81, § 1, p. 150; am. 1957, ch. 169, § 1, p. 304; am. 1969, ch. 453, § 18, p. 1195; am. 1976, ch. 210, § 1, p. 769; am. 1985, ch. 219, § 1, p. 531.

63-2211, which comprised I.C., § 63-2211, as added by 1995, ch. 159, § 1, p. 636.

63-2212, which comprised 1921, ch. 107, § 1, p. 249; I.C.A., § 61-1912.

63-2213, which comprised 1921, ch. 107, § 2, p. 249; am. 1931, ch. 26, § 1, p. 55; I.C.A., § 61-1913.

63-2214, which comprised I.C.A., § 61-1914, as added by 1949, ch. 119, § 1, was repealed by S. L. 1969, ch. 453, § 21.

63-2215, which comprised 1959, ch. 9, § 1, p. 25; am. 1965, ch. 43, § 1, p. 66; am. 1973, ch. 57, § 1, p. 92; am. 1976, ch. 158, § 1, p. 564; am. 1988, ch. 207, § 1, p. 389; am. 1996, ch. 360, § 9, p. 1212.

63-2216, which comprised 1963, ch. 146, § 1, p. 431; am. 1968, (2nd Ex. Sess.), ch. 9, § 1, p. 19; am. 1969, ch. 215, § 1, p. 708.

63-2217, which comprised I.C., § 63-2217, as added by 1967, ch. 343, § 3, p. 984; am.

1969, ch. 452, § 2, p. 1191; am. 1970, ch. 132, § 1, p. 308, was repealed by S.L. 1985, ch. 34, § 1.

Another former § 63-2217 which comprised 1965, ch. 312, § 28 was repealed by S.L. 1967, ch. 343, § 5.

63-2218, which comprised I.C., § 63-2218, as added by 1965, ch. 312, § 29, p. 849; am. 1970, ch. 102, § 1, p. 254.

63-2218A, which comprised I. C., § 63-2218A, as added by 1965, ch. 312, § 30, p. 849, was repealed by S.L. 1967, ch. 343, § 5, effective retroactively to January 1, 1967.

63-2219, which comprised I.C., § 63-2219, as added by 1965, ch. 312, § 31, p. 849; am. 1967, ch. 343, § 4, p. 984; am. 1979, ch. 18, § 4, p. 23; am. 1982, ch. 112, § 3, p. 315.

63-2220, which comprised I.C., § 63-2220, as added by 1979, ch. 18, § 2, p. 23; am. 1979, ch. 285, § 2, p. 729; am. 1980, ch. 390, § 2, p. 990; am. 1981, ch. 224, § 5, p. 433; am. 1983, ch. 207, § 1, p. 560; am. 1983, ch. 235, § 2, p. 639; am. 1986, ch. 343, § 1, p. 850; am. 1988, ch. 170, § 1, p. 300; am. 1988, ch. 178, § 1, p. 311; am. 1988, ch. 344, § 2, p. 1021; am. 1989, ch. 313, § 1, p. 808, was repealed by S.L. 1991, ch. 310, § 1, effective January 1, 1992. For present law see § 63-2220A.

A former § 63-2220 I. C., § 63-2220, as

added by 1969, ch. 452, § 3, p. 1191, was repealed by S.L. 1971, ch. 179, § 1.

63-2220A, which comprised I.C., § 63-2220A, as added by 1995, ch. 26, § 4, p. 33; am. 1995, ch. 155, § 1, p. 632; am. 1996, ch. 208, § 2, p. 658.

63-2220B, which comprised I.C., § 63-2220B, as added by 1996, ch. 67, § 2.

63-2221, which comprised 1972, ch. 235, § 1, p. 616.

63-2222, which comprised 1972, ch. 235, § 2, p. 616.

63-2223, which comprised 1972, ch. 235, § 3, p. 616.

63-2224, which comprised I.C., § 63-2224, as added by 1996, ch. 368, § 2, p. 1239.

63-2224A, which comprised I.C., § 63-2224A, as added by 1994, ch. 445, § 1, p. 1427, was repealed by S.L. 1995, ch. 445, § 1, p. 1427, effective February 16, 1995, and retroactive to January 1, 1995.

[63-2225]63-2224, which comprised I.C., § 63-2224, as added by 1996, ch. 406, § 1, p. 1348.

63-2226, which comprised I.C., § 63-2226, as added by 1991, ch. 310, § 4, p. 814; am. 1992, ch. 36, § 3, p. 131, was repealed by S.L. 1994, ch. 26, § 5, effective February 16, 1995, retroactive to January 1, 1995.

CHAPTER 23

LICENSE TAXES

SECTION.

63-2301. Licenses prepared — Printed — Accounting.

63-2302. License to be procured before commencing business.

63-2303. Pawnbroker's license.

63-2304. Auctioneer's license.

63-2305. Bridge and ferry license.

SECTION.

63-2306. Monthly settlement for licenses — Application of license money.

63-2307. Suits for recovery of license tax.

63-2308. Production of license — Plea of recovery in civil action.

63-2309. Penalty for violations.

63-2310 — 63-2314. [Repealed.]

63-2301. Licenses prepared — Printed — Accounting. — (1) The county treasurer shall issue consecutively numbered licenses for each class provided for in this chapter. The licenses shall have essentially the following information:

- (a) County issuing the license;
- (b) Type of license and amount paid;
- (c) Person or business to whom issued;
- (d) Date of issuance and expiration date;
- (e) Treasurer's signature.

(2) The treasurer shall keep in his office an accounting for all licenses sold by him. [I.C., § 63-2301, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-2301 — 63-2309 were repealed by S.L. 1995, ch. 206, § 1, effective July 1, 1995:

§ 63-2301 which comprised 1875, p. 475, § 1; R.S., § 1630; am. R.C., § 1828; reen. C.L., § 1828; C.S., § 3341; I.C.A., § 61-2001;

am. 1969, ch. 455, § 76, p. 1205; am. 1994, ch. 180, § 151, p. 420.

§ 63-2302 which comprised 1875, p. 471, § 81; R.S., § 1631; am. R.C., § 1829; reen. C.L., § 1829; C.S., § 3342; I.C.A., § 61-2002; am. 1969, ch. 455, § 77, p. 1205; am. 1994, ch. 180, § 152, p. 420.

§ 63-2303 which comprised 1875, p. 475, § 53; R.S., § 1632; am. R.C., § 1830; reen. C.L., § 1830; C.S., § 3343; I.C.A., § 61-2003; am. 1969, ch. 455, § 78, p. 1205; am. 1994, ch. 180, § 153, p. 420.

§ 63-2304 which comprised 1875, p. 475, § 82; R.S., § 1633; reen. R.C. & C.L., § 1831; C.S., § 3344; I.C.A., § 61-2004.

§ 63-2305 which comprised R.S., § 1634;

reen. R.C. & C.L., § 1832; C.S., § 3345; I.C.A., § 61-2005.

§ 63-2306 which comprised 1875, p. 475, § 87; R.S., § 1635; am. R.C., § 1833; compiled and reen. C.L., § 1833; C.S., § 3346; am. 1969, ch. 455, § 79, p. 1205; am. 1994, ch. 180, § 154, p. 420.

§ 63-2307 which comprised 1875, p. 475, § 84; R.S., § 1636; reen. R.C. & C.L., § 1834; C.S., § 3347; I.C.A., § 61-2007.

§ 63-2308 which comprised 1875, p. 475, § 84; R.S., § 1637; am. R.C., § 1835; reen. C.L., § 1835; C.S., § 3348; I.C.A., § 61-2008.

§ 63-2309 which comprised 1875, p. 475, § 84; R. S., § 1639; reen. R. C. & C.L., § 1836; C.S., § 3349; I.C.A., § 61-2009.

63-2302. License to be procured before commencing business. —

A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the treasurer of the county where the applicant desires to transact the business which license authorizes the party obtaining it in his particular locality in the county to transact the business described in the license. Separate licenses must be obtained for each branch, establishment or separate house of business located in the same county.

No license issued under this chapter shall be required of any person to carry on any business within the limits of any incorporated city having power by its charter to impose or levy city license taxes, if such person procures the license required by the ordinances or orders of such city. [I.C., § 63-2302, as added by 1995, ch. 206, § 2, p. 701; am. 1997, ch. 146, § 1, p. 421.]

STATUTORY NOTES

Prior Laws. — Former § 63-2302 was repealed. See Prior Laws, § 63-2301.

63-2303. Pawnbroker's license. — Each pawnbroker whose business is located in the county and outside the limits of an incorporated city must obtain a pawnbroker's license from the treasurer and must pay therefor fifty dollars (\$50.00) per calendar quarter. [I.C., § 63-2303, as added by 1995, ch. 206, § 2, p. 701; am. 1997, ch. 146, § 2, p. 421.]

STATUTORY NOTES

Prior Laws. — Former § 63-2303 was repealed. See Prior Laws, § 63-2301.

63-2304. Auctioneer's license. — Every auctioneer, whether commissioned or salaried, must obtain a license from the treasurer and must pay therefor five dollars (\$5.00) per month; provided, that upon the payment of twenty dollars (\$20.00) in advance, an auctioneer may obtain from the treasurer an annual license, which annual license shall date from the first

day of March of each and every year, and shall entitle the auctioneer to conduct auction sales in any county in the state of Idaho. [I.C., § 63-2304, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Cross References. — Military exemption from license fees, § 67-2602A.

Prior Laws. — Former § 63-2304 was repealed. See Prior Laws, § 63-2301.

63-2305. Bridge and ferry license. — Licenses to take tolls on bridges or ferries are fixed annually by the commissioners. The licenses therein provided for must be obtained from the treasurer of the county. [I.C., § 63-2305, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 63-2305 was repealed. See Prior Laws, § 63-2301.

63-2306. Monthly settlement for licenses — Application of license money. — On the first Monday in each month the treasurer shall pay into the county treasury all money collected from all licenses sold during the preceding month upon the certificate of the county auditor, and shall file a statement or report each month with the county auditor showing the amount of licenses collected in each school district to be apportioned in the following manner:

(1) If by applicants within an incorporated city or city acting under special charter:

- (a) Thirty percent (30%) to the school district in which the licenses are collected for general revenue purposes;
- (b) Forty percent (40%) for general revenue purposes of the city; and
- (c) Thirty percent (30%) to the county current expense fund.

(2) If by applicants without an incorporated city:

- (a) Fifty percent (50%) to the school district in which the licenses are collected; and
- (b) Fifty percent (50%) to the county current expense fund. [I.C., § 63-2306, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 63-2306 was repealed. See Prior Laws, § 63-2301.

63-2307. Suits for recovery of license tax. — Against any person required to take out a license who fails, neglects or refuses to take out such license, or who carries on, or attempts to carry on, business without such license, the treasurer may direct suit in the name of the state of Idaho as plaintiff, to be brought for the recovery of the license tax, and in such case either the treasurer or prosecuting attorney may make the necessary affidavit for a writ of attachment, which may issue without bond being given

on behalf of the plaintiff. In case of a judgment for the plaintiff, five hundred dollars (\$500) therefor and costs must be paid by the defendant into the county current expense fund. [I.C., § 63-2307, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 63-2307 was repealed. See Prior Laws, § 63-2301.

63-2308. Production of license — Plea of recovery in civil action. — Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with the damages and costs. [I.C., § 63-2308, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 63-2308 was repealed. See Prior Laws, § 63-2301.

63-2309. Penalty for violations. — Anyone failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine not exceeding three hundred dollars (\$300) or imprisonment in the county jail for not to exceed six (6) months or by both such fine and imprisonment. [I.C., § 63-2309, as added by 1995, ch. 206, § 2, p. 701.]

STATUTORY NOTES

Prior Laws. — Former § 63-2309 was repealed. See Prior Laws, § 63-2301.

63-2310 — 63-2314. Monthly settlement for licenses — Application of license moneys — Auctioneer's bridge and ferry, exhibitions and pawnbrokers licenses — Penalty for violation. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised 1875, p. 475. § 72; 1875, p.866, § 5; R.S. §§ 1640, 1642, 1643, 1645; 1895, p. 37. § 1; 1899, p. 377, § 1; reen. 1899,p. 242, § 1; 1903, p. 104, § 1; reen. R.C. & C.L., § 1837, 1839, 1840; compiled and reen. § 1841; C.S., §§ 3350, 3351 - 3353; am. 1925, ch. 219, § 8, p.401; I.C.A., §§ 61-2010 - 61-2013; § 61-2013, as added by 1937, ch. 193, § 1, p. 327; am. 1941, ch. 129, § 1, p. 226; am. 1961, ch. 171, §§ 1,2, p. 264; am. 1963, ch. 272, § 1, p. 694; am. 1969, ch. 455, § 80, p. 1205, were repealed by S.L. 1995, ch. 206, § 1, effective July 1, 1995.

CHAPTER 24

FUELS TAX

SECTION.

- 63-2401. Definitions.
- 63-2402. Imposition of tax upon motor fuel. [Effective until December 1, 2007.]
- 63-2402. Imposition of tax upon motor fuel. [Effective December 1, 2007.]
- 63-2403. Receipt of motor fuel — Determination.
- 63-2404. Method of measurement of gallons received.
- 63-2405. Payment of tax.
- 63-2406. Distributor reports.
- 63-2406A. [Repealed.]
- 63-2407. Deductions authorized. [Effective until December 1, 2007.]
- 63-2407. Deductions authorized. [Effective December 1, 2007.]
- 63-2408. Aircraft engine fuel tax.
- 63-2409. [Repealed.]
- 63-2410. Refund of gasoline tax procedure.
- 63-2411. Purchase of gasoline by retail dealers.
- 63-2412. Distribution of tax revenues from tax on gasoline and aircraft engine fuel.
- 63-2413 — 63-2415. [Reserved.]
- 63-2416, 63-2417. [Repealed.]
- 63-2418. Distribution of tax revenues from tax on special fuels.
- 63-2419, 63-2420. [Repealed.]
- 63-2421. Use tax — Returns and payment of use tax by consumers.
- 63-2422. [Repealed.]
- 63-2423. Credits and refunds to consumers.
- 63-2424. Gaseous fuels.
- 63-2425. Dyed fuel and other untaxed fuel prohibited for use on a highway.
- 63-2426. [Reserved.]
- 63-2427. Administration.
- 63-2427A. Distributor's license. [Effective until December 1, 2007.]

SECTION.

- 63-2427A. Distributor's license. [Effective December 1, 2007.]
- 63-2427B. Licensed gaseous fuels distributors — Reports.
- 63-2427C. Revocation and suspension of license — Penalties.
- 63-2428. Bonding.
- 63-2429. Required records.
- 63-2430. Revocation or cancellation of license.
- 63-2431. Tax in lieu of all other taxes imposed.
- 63-2432. Civil action to prevent doing business without license — Injunction.
- 63-2433. Doing business without a license — Penalties.
- 63-2434. Enforcement provisions.
- 63-2435. Taxes are state money. [Repealed effective December 1, 2007.]
- 63-2436. Reports of importations by carrier — Contents.
- 63-2437. Instate pipeline terminal and storage reports.
- 63-2438. International fuel tax agreement (IFTA) license.
- 63-2439. Reports and payment by holders of an Idaho international fuel tax agreement (IFTA) license.
- 63-2440. Exemptions from international fuel tax agreement license and reports and temporary permits.
- 63-2441. Penalties.
- 63-2442. Exchange of information agreements.
- 63-2442A. International fuel tax agreement and other agreements between jurisdictions.
- 63-2443. Violations and penalties.
- 63-2444. Effect of tribal agreements. [Effective December 1, 2007.]

63-2401. Definitions. — In this chapter:

- (1) "Aircraft engine fuel" means:
 - (a) Aviation gasoline, defined as any mixture of volatile hydrocarbons used in aircraft reciprocating engines; and
 - (b) Jet fuel, defined as any mixture of volatile hydrocarbons used in aircraft turbojet and turboprop engines.
- (2) "Biodiesel" means any fuel that is derived in whole or in part from agricultural products or animal fats or the wastes of such products and is suitable for use as fuel in diesel engines.
- (3) "Biodiesel blend" means any fuel produced by blending biodiesel with petroleum-based diesel to produce a fuel suitable for use in diesel engines.

(4) "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state; or

(c) An irrevocable letter of credit issued to the commission by a bank doing business in this state payable to the state upon failure of the person on whose behalf it is issued to remit any payment due under the provisions of this chapter.

(5) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(6) "Commission" means the state tax commission of the state of Idaho.

(7) "Distributor" means any person who receives motor fuel in this state, and includes a special fuels dealer. Any person who sells or receives gaseous fuels will not be considered a distributor unless the gaseous fuel is delivered into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by him.

(8) "Dyed fuel" means diesel fuel that is dyed pursuant to requirements of the internal revenue service, or the environmental protection agency.

(9) "Exported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

(10) "Gasohol" means gasoline blended with ten percent (10%) or more of anhydrous ethanol.

(11) "Gasoline" means any mixture of volatile hydrocarbons suitable as a fuel for the propulsion of motor vehicles or motor boats. "Gasoline" also means aircraft engine fuels when used for the operation or propulsion of motor vehicles or motor boats and includes gasohol, but does not include special fuels.

(12) "Highways" means every place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel which is maintained by the state of Idaho or an agency or taxing subdivision or unit thereof or the federal government or an agency or instrumentality thereof. Provided, however, if the cost of maintaining a roadway is primarily borne by a special fuels user who operates motor vehicles on that roadway pursuant to a written contract during any period of time that a special fuels tax liability accrues to the user, such a roadway shall not be considered a "highway" for any purpose related to calculating that user's special fuels' tax liability or refund.

(13) "Idling" means the period of time greater than twenty-five hundredths (.25) of an hour when a motor vehicle is stationary with the engine operating at less than one thousand two hundred (1,200) revolutions per

minute (RPM), without the power take-off (PTO) unit engaged, with the transmission in the neutral or park position, and with the parking brake set.

(14) "Imported" means delivered by truck or rail across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

(15) "International fuel tax agreement" and "IFTA" mean the international fuel tax agreement required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, and referred to in title 49, U.S.C., section 31701, including subsequent amendments to that agreement.

(16) "Jurisdiction" means a state of the United States, the District of Columbia, a province or territory of Canada, or a state, territory or agency of Mexico in the event that the state, territory or agency participates in the international fuel tax agreement.

(17) "Licensed distributor" means any distributor who has obtained a license under the provisions of section 63-2427A, Idaho Code.

(18) "Motor fuel" means gasoline, special fuels, aircraft engine fuels or any other fuels suitable for the operation or propulsion of motor vehicles, motor boats or aircraft.

(19) "Motor vehicle" means every self-propelled vehicle designed for operation, or required to be licensed for operation, upon a highway.

(20) "Person" means any individual, firm, fiduciary, copartnership, association, limited liability company, corporation, governmental instrumentality including the state and all of its agencies and political subdivisions, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context. Whenever used in any clause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means the partners or members, and as applied to corporations, the officers.

(21) "Recreational vehicle" means a snowmobile as defined in section 67-7101, Idaho Code; a motor driven cycle or motorcycle as defined in section 49-114, Idaho Code; any recreational vehicle as defined in section 49-119, Idaho Code; and an all-terrain vehicle as defined in section 67-7101, Idaho Code.

(22) "Retail dealer" means any person engaged in the retail sale of motor fuels to the public or for use in the state.

(23) "Special fuels" means:

(a) All fuel suitable as fuel for diesel engines;

(b) A compressed or liquified gas obtained as a byproduct in petroleum refining or natural gasoline manufacture, such as butane, isobutane, propane, propylene, butylenes, and their mixtures; and

(c) Natural gas, either liquid or gas, and hydrogen, used for the generation of power for the operation or propulsion of motor vehicles.

(24) "Special fuels dealer" means "distributor" under subsection (6) of this section.

(25) "Special fuels user" means any person who uses or consumes special fuels for the operation or propulsion of motor vehicles owned or controlled by him upon the highways of this state.

(26) "Use" means either:

- (a) The receipt, delivery or placing of fuels by a licensed distributor or a special fuels dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or
- (b) The consumption of fuels in the operation or propulsion of a motor vehicle on the highways of this state. [I.C., § 63-2401, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 1, p. 169; am. 1985, ch. 40, § 1, p. 81; am. 1985, ch. 242, § 1, p. 570; am. 1986, ch. 315, § 1, p. 777; am. 1987, ch. 82, § 1, p. 155; am. 1988, ch. 265, § 578, p. 549; am. 1991, ch. 306, § 1, p. 802; am. 1991, ch. 307, § 1, p. 805; am. 1992, ch. 106, § 1, p. 327; am. 1994, ch. 344, § 1, p. 1080; am. 1995, ch. 132, § 1, p. 565; am. 1995, ch. 348, § 1, p. 1142; am. 1996, ch. 223, § 1, p. 731; am. 1997, ch. 86, § 1, p. 205; am. 2001, ch. 104, § 1, p. 343; am. 2002, ch. 30, § 1, p. 37; am. 2002, ch. 174, § 3, p. 508; am. 2002, ch. 345, § 35, p. 963; am. 2004, ch. 235, § 1, p. 693; am. 2004, ch. 265, § 1, p. 745; am. 2005, ch. 293, § 1, p. 931; am. 2007, ch. 37, § 1, p. 88.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-2401 — 63-2434, which comprised (I.C., §§ 63-2401 — 63-2434, as added by 1973, ch. 260, § 1, p. 512; am. 1973, ch. 297, § 3, p. 625; am. 1974, ch. 19, § 7, p. 524; am. 1976, ch. 78, § 1, p. 251; am. 1979, ch. 218, § 4, p. 603; am. 1980, ch. 164, § 1, p. 351; am. 1980, ch. 189, § 1, p. 419; am. 1980, ch. 269, § 3, p. 706; am. 1980, ch. 287, § 1, p. 756; am. 1980, ch. 288, § 1, p. 757; am. 1980, ch. 396, § 2, p. 1001; am. 1981, ch. 290, § 8, p. 597; am. 1981, ch. 308, § 1, p. 633; am. 1981, ch. 332, §§ 2, 5, p. 692; am. 1982, ch. 329, § 1, p. 834) were repealed by S.L. 1983, ch. 158, § 1. Former chapter 63-24 was also repealed by S.L. 1983, ch. 91, § 1, effective July 1, 1983. However, ch. 91 was repealed by § 2 of S.L. 1983 (Ex. Sess.), ch. 1, effective July 1, 1983.

This chapter was also enacted by S.L. 1983, ch. 91, § 2, effective July 1, 1983. However, ch. 91 was repealed by § 2 of S.L. 1983 (Ex. Sess.), ch. 1, effective July 1, 1983.

Amendments. — This section was amended by three 2002 acts — ch. 30, § 1, effective July 1, 2002, ch. 174, § 3, effective retroactively to July 1, 1996, and ch. 345, § 35, effective July 1, 2002 — which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 30, § 1, added the definition of "biodiesel" and renumbered the following paragraphs accordingly; in the definition of "international tax agreement" added "and referred to in title 49, U.S.C., section 31701"; in the definition of "jurisdiction" added the final phrase beginning "or a state"; and in the first sentence of the defini-

tion of "person" added "limited liability company."

The 2002 amendment, by ch. 174, § 3, in the first sentence of the definition of "distributor", substituted "motor" for "gasoline, special fuels, and/or aircraft".

The 2002 amendment, by ch. 345, § 35, in the definition of "recreational vehicle", substituted "recreational vehicle as" for "vehicular type unit either as an integral part of, or required for the movement of, units" and substituted "49-119" for "39-4105(15)".

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 235, § 1, effective July 1, 2004, inserted "; and an all-terrain vehicle as defined in section 67-7101, Idaho Code" at the end of present subsection (20).

The 2004 amendment, by ch. 265, § 1, effective July 1, 2004, inserted present subsection (12) and renumbered the subsequent subsections accordingly.

The 2007 amendment, by ch. 37, deleted "or mixture of fuels" following "fuel" in subsection (2); and added subsection (3) and redesignated subsections accordingly.

Federal References. — The Intermodal Surface Transportation Efficiency Act of 1991 referred to in the definition of "international fuel tax agreement", is compiled throughout U.S.C. Titles 5, 16, 23, 26, 33, 40 Appendix, 42, 49, and 49 Appendix.

Effective Dates. — Section 2 of S.L. 2005, ch. 293 declared an emergency. Approved April 6, 2005.

63-2402. Imposition of tax upon motor fuel. [Effective until December 1, 2007.] — (1) A tax is hereby imposed upon the receipt of motor fuel in this state by any distributor receiving motor fuel upon which the tax imposed by this section has not previously been paid. The tax shall be imposed without regard to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

(2) The tax imposed in this section shall be at the rate of twenty-five cents (25¢) per gallon of motor fuel received. This tax shall be subject to the exemptions, deductions and refunds set forth in this chapter. The tax shall be paid by distributors upon the distributor's receipt of the motor fuel in this state.

(3) Any person coming into this state in a motor vehicle may transport in the manufacturer's original tank of that vehicle, for his own use only, not more than thirty (30) gallons of motor fuel for the purpose of operating that motor vehicle, without complying with the provisions of this chapter.

(4) The tax imposed in subsection (1) of this section does not apply to:

(a) Special fuels that have been dyed at a refinery or terminal under the provisions of 26 U.S.C. section 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder except as provided in section 63-2425, Idaho Code; or

(b) Special fuel dispensed into a motor vehicle which uses gaseous special fuels and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

(c) Special fuels that are gaseous special fuels, as defined in section 63-2401, Idaho Code, except that part thereof that is delivered into the fuel supply tank or tanks of a motor vehicle; or

(d) Aircraft engine fuel subject to tax under section 63-2408, Idaho Code. [I.C., § 63-2402, as added by 1983, ch. 158, § 4, p. 436; am. 2002, ch. 174, § 2, p. 508.]

STATUTORY NOTES

Prior Laws. — Former § 63-2402 was repealed. See Prior Laws, § 63-2401.

Federal References. — The clean air act, referred to in subsection (4)(a), is codified as 42 U.S.C.S. § 7401 et seq.

Compiler's Notes. — For this section as

effective December 1, 2007, see the following section, also numbered § 63-2402.

Effective Dates. — Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

JUDICIAL DECISIONS

Indian Reservations.

Court could not conclude that Congress's explicit concession permitting states to tax federal government reservations on motor fuel deliveries also embodied an implied vitiating of Indians' sovereignty. Given the standard for finding that Congress has authorized states by taxation to intrude on the sovereignty of Indian tribes, which requires that

the showing of congressional intent be "unmistakably clear," and analyzing the Hayden-Cartwright Act's text, structure, and legislative history in this light, the court concluded that Congress did not abrogate the tribes' immunity from state taxation of fuels delivered to and sold on their reservations. *Coeur d'Alene Tribe v. Hammond*, 384 F.3d 674 (9th Cir. 2004).

63-2402. Imposition of tax upon motor fuel. [Effective December 1, 2007.] — (1) A tax is hereby imposed upon the distributor who receives motor fuel in this state. The legal incidence of the tax imposed under this section is borne by the distributor. The tax becomes due and payable upon receipt of the motor fuel in this state by the distributor unless such tax liability has previously accrued to another distributor pursuant to this section. The tax shall be imposed without regard to whether use is on a governmental basis or otherwise, unless exempted by this chapter.

(2) The tax imposed in this section shall be at the rate of twenty-five cents (25¢) per gallon of motor fuel received. This tax shall be subject to the exemptions, deductions and refunds set forth in this chapter.

(3) Nothing in this chapter shall prohibit the distributor who is liable for payment of the tax imposed under subsection (1) of this section from including as part of the selling price an amount equal to such tax on motor fuels sold or delivered by such distributor; provided however, that nothing in this chapter shall be deemed to impose tax liability on any person to whom such fuel is sold or delivered except as provided in subsection (6) of this section.

(4) Any person coming into this state in a motor vehicle may transport in the manufacturer's original tank of that vehicle, for his own use only, not more than thirty (30) gallons of motor fuel for the purpose of operating that motor vehicle, without complying with the provisions of this chapter.

(5) The tax imposed in this section does not apply to:

(a) Special fuels that have been dyed at a refinery or terminal under the provisions of 26 U.S.C. section 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder except as provided in section 63-2425, Idaho Code; or

(b) Special fuel dispensed into a motor vehicle which uses gaseous special fuels and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code; or

(c) Special fuels that are gaseous special fuels, as defined in section 63-2401, Idaho Code, except that part thereof that is delivered into the fuel supply tank or tanks of a motor vehicle; or

(d) Aircraft engine fuel subject to tax under section 63-2408, Idaho Code.

(6) Should the distributor of first receipt be exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or member of such tribe, such distributor shall not bear the tax's legal incidence and must pass the tax through as part of the selling price of the fuel. Such distributor shall retain the administrative obligation to remit the tax, and such obligation shall accrue upon receipt in accordance with subsection (1) of this section. Should a retailer otherwise subject to the tax be exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or member of such tribe, the retailer shall not bear the tax's legal incidence and must pass the tax through as part of the selling price of the fuel to the consumer, unless such consumer is exempt from imposition of the tax as a matter of federal law, by virtue of its status as a federally-recognized Indian tribe or membership in such tribe, and the retailer shall be entitled to claim a credit

against taxes otherwise due and owing under this chapter or a tax refund, together with interest, attributable to the fuel purchased by such consumer. [I.C., § 63-2402, as added by 1983, ch. 158, § 4, p. 436; am. 2002, ch. 174, § 2, p. 508; am. 2007, ch. 288, § 1, p. 817.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 288, in subsection (1), in the first sentence, substituted “imposed upon the distributor who receives motor fuel” for “imposed upon the receipt of motor fuel,” and deleted “by any distributor receiving motor fuel upon which the tax imposed by this section has not previously been paid” from the end, and added the second and third sentences; in subsection (2), deleted the former last sentence, which read: “The tax shall be paid by distributors

upon the distributor’s receipt of the motor fuel in this state”; added subsections (3) and (6) and redesignated subsections accordingly; and in subsection (5), deleted “subsection (1) of” preceding “this section.”

Compiler’s Notes. — For this section as effective until December 1, 2007, see the preceding section, also numbered § 63-2402.

Effective Dates. — Section 7 of S.L. 2007, ch. 288 provided that the act should take effect on December 1, 2007.

63-2403. Receipt of motor fuel — Determination. — Motor fuel is received as follows:

- (1)(a) Motor fuel produced, refined, manufactured, blended or compounded by any person or stored at a pipeline terminal in this state by any person is received by that person when it is loaded into tank cars, tank trucks, tank wagons or other types of transportation equipment or when it is placed into any tank or other container from which sales or deliveries not involving transportation are made.
- (b) Motor fuel is received by a person other than the person designated in subsection (1)(a) of this section in the following circumstances:
 - (i) Motor fuel delivered from a pipeline terminal in this state to a licensed distributor is received by the licensed distributor to whom it is first delivered. *
 - (ii) Motor fuel delivered to a person who is not a licensed distributor for the account of a person that is so licensed, is received by the licensed distributor for whose account it is shipped.
- (2) Notwithstanding the provisions of subsection (1) above, motor fuel shipped or delivered from a refinery or pipeline terminal to another refinery or pipeline terminal, is not received by reason of that shipment or delivery.
- (3) Any product other than motor fuel that is blended to produce motor fuel other than at a refinery or pipeline terminal in this state is received by the person who is the owner of the blended fuel after the blending is completed.
- (4)(a) Motor fuel imported into this state, other than fuel placed in storage at a refinery or pipeline terminal in this state, is received at the time the fuel arrives in this state by the person who is, at the time of arrival, the owner of the fuel.
- (b) Motor fuel imported into this state by a licensed distributor and delivered directly to a person not a licensed distributor is received by the licensed distributor importing that fuel into this state at the time the fuel arrives in this state.

(c) Fuel arrives in this state at the time it crosses the border of this state. [I.C., § 63-2403, as added by 1983, ch. 158, § 4, p. 436; am. 1997, ch. 85, § 1, p. 203; am. 2002, ch. 174, § 4, p. 508.]

STATUTORY NOTES

Prior Laws. — Former § 63-2403 was repealed. See Prior Laws, § 63-2401. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

Effective Dates. — Section 14 of S.L.

63-2404. Method of measurement of gallons received. — Gasoline and/or aircraft engine fuel received by distributors shall be reported under rules and regulations prescribed by the commission, and be based upon consistent methods, generally recognized and accepted for gasoline and/or aircraft engine fuel tax accounting purposes, in respect to gallonage, stock transfers and stock accounting records. [I.C., § 63-2404, as added by 1983, ch. 158, § 4, p. 436; am. 1983, ch. 242, § 2, p. 650.]

STATUTORY NOTES

Prior Laws. — Former § 63-2404 was repealed. See Prior Laws, § 63-2401.

63-2405. Payment of tax. — The excise tax imposed by section 63-2402, Idaho Code, is to be paid by the distributor, and measured by the total number of gallons of motor fuel received by him, at the rate specified in section 63-2402, Idaho Code. That tax, together with any penalty and/or interest due, shall be remitted with the monthly distributor's report required in section 63-2406, Idaho Code. [I.C., § 63-2405, as added by 1983, ch. 158, § 4, p. 436; am. 1983, ch. 242, § 2, p. 650; am. 1983 (Ex. Sess.), ch. 1, § 5, p. 3; am. 1984, ch. 87, § 2, p. 169; am. 1984, ch. 195, § 34, p. 445; am. 1986, ch. 344, § 2, p. 851; am. 1988, ch. 198, § 1, p. 376; am. 1991, ch. 120, § 1, p. 259; am. 1994, ch. 166, § 1, p. 373; am. 1996, ch. 343, § 4, p. 1149; am. 1998, ch. 103, § 2, p. 353; am. 2002, ch. 30, § 2, p. 37; am. 2002, ch. 174, § 5, p. 508.]

STATUTORY NOTES

Prior Laws. — Former § 63-2405 was repealed. See Prior Laws, § 63-2401.

Amendments. — This section was amended by two 2002 acts — ch. 30, § 2, effective July 1, 2002, and ch. 174, § 5, effective retroactively to July 1, 1996 — which are compatible and have been compiled together.

The 2002 amendment, by ch. 30, § 2, deleted subsection (2), and deleted the subsection (1) designation from the first paragraph.

The 2002 amendment, by ch. 174, § 5, substituted "payment" for "imposition" in the section heading and rewrote the first sentence.

Legislative Intent. — Section 1 of S.L. 1983 (Ex. Sess.), ch. 1 read: "It is legislative

intent by the enactment of this bill to make certain technical corrections to the bills which recodified the motor fuels tax laws and which increased the tax on motor fuels. The enactment of this bill confirms legislative intent that the increased tax on motor fuels provided by H.B. No. 246, First Regular Session, Forty-seventh Idaho Legislature, be effective on the date of signature by the Governor, i.e., April 14, 1983."

Section 1 of S.L. 1986, ch. 344 read: "The state of Idaho has an economy that is highly dependent upon agriculture and forest products, therefore the state needs to encourage the production, distribution and consumption of gasohol as defined in subsection (7) [(9)] of

section 63-2401, Idaho Code. It is the purpose of this act to continue to encourage the production, distribution and consumption of gasohol and to assist the agriculture and forest product sectors of the economy of this state."

Compiler's Notes. — Session Law 1994, ch. 166 was vetoed by the Governor. Upon reconsideration over two-thirds of the House and Senate approved the bill on March 21, 1994 and March 22, 1994, respectively, notwithstanding the objections of the Governor. Thus, S.L. 1994, ch. 166 became law on July 1, 1994, notwithstanding the objections of the Governor.

This section was also enacted by S.L. 1983, ch. 91, § 1, effective July 1, 1983 and amended by S.L. 1983, ch. 242, § 2. However, chs. 91 and 242 were repealed by §§ 2 and 3 of S.L. 1983 (Ex. Sess.), ch. 1, respectively, effective July 1, 1983.

Effective Dates. — Section 3 of S.L. 1986, ch. 344 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after April 30, 1986." Approved April 4, 1986.

Section 3 of S.L. 1988, ch. 198 read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after April 1, 1988. Section 2 of this act shall be in full force and effect on and after July 1, 1988." Approved March 28, 1988.

Section 5 of S.L. 1996, ch. 343 provided that sections 1, 2, and 4 of the act shall be in full force and effect on and after April 1, 1996.

Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

JUDICIAL DECISIONS

Cited in: V-1 Oil Co. v. Idaho State Tax Comm'n, 134 Idaho 716, 9 P.3d 519 (2000).

63-2406. Distributor reports. — (1) Each distributor shall, not later than the last day of each calendar month or for such other reporting period as the commission may authorize, render to the commission an accurate report of all motor fuel received by him in this state during the preceding reporting period. The report shall be made in the manner and on forms required by the commission.

(2) The distributor's report shall include:

(a) An itemized statement of the total number of gallons of motor fuel received during the preceding calendar month; and

(b) Other information as the commission may require for the proper administration of this chapter.

(3) The report shall be accompanied by a remittance of the tax shown to be due on the report together with any applicable interest and penalty, unless the amounts due are paid by electronic funds transfer in the manner provided by section 67-2026, Idaho Code.

(4) Any distributor required to pay the tax imposed by this chapter who fails to pay such tax shall be liable to the commission for the amount of tax not remitted plus any applicable penalty or interest. The commission may collect such amounts in the manner provided in section 63-2434, Idaho Code. [I.C., § 63-2406, as added by 1983, ch. 158, § 4, p. 436; am. 1998, ch. 103, § 3, p. 353; am. 2000, ch. 155, § 1, p. 392.]

STATUTORY NOTES

Prior Laws. — Former § 63-2406 which comprised (I.C., § 63-2406, as added by 1973, ch. 260, § 1, p. 512; am. 1976, ch. 78, § 1, p. 251; am. 1981, ch. 308, § 1, p. 633; am. 1981, ch. 332, § 5, p. 692; am. 1982, ch. 329, § 1, p.

834) was repealed by § 1 of S.L. 1983, ch. 158, effective July 1, 1983. However, prior to the effective date of such repeal (July 1, 1983) such section was amended by § 6 of S.L. 1983 (Ex. Sess.), ch. 1, effective April 14, 1983. As

so amended such former section read, "63-2406. IMPOSITION OF TAX. An excise tax is hereby imposed on all motor fuels and/or aircraft engine fuel received. Such tax is to be paid by the licensed distributor, and measured by the total number of gallons received by him, at the rate of fourteen and one-half cents (14 1/2¢) per gallon, one cent (1¢) of which shall be put into the account for local units of government to be used in the maintenance and construction of local roads and streets. From May 1, 1981, to April 30, 1986, the rate of the excise tax to be imposed on gasohol, as defined by section 63-2402(c), Idaho Code, shall be four cents (4¢) per gallon less than the amount of the excise tax that is imposed on motor fuels and/or aircraft engine fuel by this section. On and after May 1, 1986,

the same amount of excise tax shall be imposed on gasohol, as defined by section 63-2402(c), Idaho Code, as is imposed on motor fuels and/or aircraft engine fuels by this section. Such tax, together with any penalty and/or interest due, shall be remitted with the monthly distributor's report required by section 63-2407, Idaho Code."

Effective Dates. — Section 7 of S.L. 1983 (Ex. Sess.), ch. 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, Sections 2, 4 and 5 of this act shall be in full force and effect on and after July 1, 1983, and Sections 1, 3 and 6 of this act shall be in full force and effect on and after passage and approval, and retroactively to April 14, 1983." Approved May 11, 1983.

63-2406A. Incentive for electronic filing of distributor's reports and payment of taxes. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-2406A, as added by 2000, ch. 302, § 2, p. 1033, was repealed by S.L. 2005, ch. 28, § 1.

63-2407. Deductions authorized. [Effective until December 1, 2007.] — Each licensed distributor shall deduct from his monthly report:

(1) Motor fuel exported from this state other than in the supply tanks of motor vehicles, motor boats or aircraft when supported by a shipping document, an invoice signed by the purchaser, or other proper documents approved by the commission but only if:

(a) The purchaser is not a licensed distributor and the seller can establish that any tax due in the jurisdiction to which the motor fuel is destined is paid; or

(b) The purchaser is a licensed distributor in the jurisdiction to which the motor fuel is destined.

(2) Motor fuel returned to a licensed distributor's refinery or pipeline terminal storage when supported by proper documents approved by the commission.

(3) Motor fuel lost or destroyed by fire, lightning, flood, tornado, wind-storm, explosion, or other accidental casualty, after presenting to the commission satisfactory proof of loss.

(4) The number of gallons which would be equal to one percent (1%) of the total number of gallons received during the reporting period, less the total number of gallons deducted under subsections (1) through (3) of this section, which credit is granted to the licensed distributor to reimburse him for the expense incurred on behalf of the state of Idaho in collecting and remitting motor fuel tax moneys, maintaining necessary records for the state, preparing necessary reports and remittances in compliance with this chapter, and for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty as provided in subsection (3) of this section. The licensed

distributor may, in addition to the above, deduct the number of gallons equal to one percent (1%) of the total number of gallons received during the preceding calendar month, less the total number of gallons deducted under subsections (1) through (3) of this section, to cover shrinkage, evaporation, spillage and handling losses of a retail dealer. The latter deductions are to be allowed only upon filing with the commission satisfactory evidence as may be prescribed by it indicating the credit allowance has been made in favor of the retail dealer or paid to him. The evidence shall be submitted together with the report wherein this portion of the deduction is claimed. A licensed distributor who sells and delivers motor fuel directly to the consumer and not for resale shall, with respect to those sales, be deemed a retail dealer for the purposes of this section.

(5) Motor fuel sold to the Idaho national guard for use in aircraft and in vehicles used off public highways provided, however, such deduction is supported by an exemption certificate signed by an authorized officer of the Idaho national guard.

(6) For sales made on or after July 1, 1995, taxes previously paid on gallons represented by accounts found to be worthless and actually charged-off for income tax purposes may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, the tax per gallon shall be paid based upon the amount actually received divided by the price per gallon of the original sale multiplied by the appropriate tax rate.

(7) In the case of motor fuel that is:

(a) Gasohol, deduct the number of gallons of denatured anhydrous ethanol contained in gasohol imported or blended during the reporting period and that would be taxable in the report but for the deduction allowed by this subsection.

(b) Biodiesel, deduct the number of gallons that are sold during the month to which the report relates to any person other than a licensed distributor.

(c) A biodiesel blend, deduct the number of gallons of biodiesel contained in the biodiesel blend imported, blended or received from a licensed distributor who is a biodiesel producer during the month to which the report relates. In the case of a licensed distributor who is a biodiesel producer, the deduction is only available when the producer sells its biodiesel blends to a person who is not a motor fuel distributor licensed in this state.

(d) The deduction provided in this subsection shall not exceed ten percent (10%) of (i) the volume of gasohol reported on the report or (ii) the special fuel which is or contains biodiesel.

(e) The deduction allowed by paragraphs (b) and (c) of this subsection is only available for motor fuel otherwise subject to tax under this chapter.

[I.C., § 63-2407, as added by 1983, ch. 158, § 4, p. 436; am. 1987, ch. 209, § 1, p. 442; am. 1989, ch. 406, § 1, p. 993; am. 1995, ch. 132, § 2, p. 565; am. 1995, ch. 303, § 1, p. 1051; am. 1996, ch. 223, § 2, p. 731; am. 1998, ch. 103, § 4, p. 353; am. 2002, ch. 30, § 3, p. 37; am. 2007, ch. 37, § 2, p. 88.]

STATUTORY NOTES

Prior Laws. — Former § 63-2407 was repealed. See Prior Laws, § 63-2401.

Amendments. — The 2007 amendment, by ch. 37, in subsection (7), deleted “received during the reporting period and included in the report” following “motor fuel” in the introductory language; in subsection (7)(a), added the language beginning “imported or blended during the reporting period”; rewrote subsection

(7)(b), which formerly read: “Biodiesel, in whole or in part, deduct the number of gallons of agricultural products or animal fats or the wastes of such products contained in the fuel”; and added subsections (7)(c) and (7)(e), and made a related redesignation.

Compiler’s Notes. — For this section as effective December 1, 2007, see the following section, also numbered § 63-2407.

63-2407. Deductions authorized. [Effective December 1, 2007.] — Each licensed distributor shall deduct from his monthly report:

(1) Motor fuel exported from this state other than in the supply tanks of motor vehicles, motor boats or aircraft when supported by a shipping document, an invoice signed by the purchaser, or other proper documents approved by the commission but only if:

(a) The purchaser is not a licensed distributor and the seller can establish that any tax due in the jurisdiction to which the motor fuel is destined is paid; or

(b) The purchaser is a licensed distributor in the jurisdiction to which the motor fuel is destined.

(2) Motor fuel returned to a licensed distributor’s refinery or pipeline terminal storage when supported by proper documents approved by the commission.

(3) Motor fuel lost or destroyed by fire, lightning, flood, tornado, wind-storm, explosion, or other accidental casualty, after presenting to the commission satisfactory proof of loss.

(4) The number of gallons which would be equal to two percent (2%) of the total number of gallons received during the reporting period, less the total number of gallons deducted under subsections (1) through (3) of this section, which credit is granted to the licensed distributor to reimburse him for loss from evaporation, handling, spillage and shrinkage, except losses caused by casualty as provided in subsection (3) of this section.

(5) Motor fuel sold to the Idaho national guard for use in aircraft and in vehicles used off public highways provided, however, such deduction is supported by an exemption certificate signed by an authorized officer of the Idaho national guard.

(6) In the case of motor fuel that is:

(a) Gasohol, deduct the number of gallons of denatured anhydrous ethanol contained in gasohol imported or blended during the reporting period and that would be taxable in the report but for the deduction allowed by this subsection.

(b) Biodiesel, deduct the number of gallons that are sold during the month to which the report relates to any person other than a licensed distributor.

(c) A biodiesel blend, deduct the number of gallons of biodiesel contained in the biodiesel blend imported, blended or received from a licensed distributor who is a biodiesel producer during the month to which the report relates. In the case of a licensed distributor who is a biodiesel

producer, the deduction is only available when the producer sells its biodiesel blends to a person who is not a motor fuel distributor licensed in this state.

(d) The deduction provided in this subsection shall not exceed ten percent (10%) of (i) the volume of gasohol reported on the report or (ii) the special fuel which is or contains biodiesel.

(e) The deduction allowed by paragraphs (b) and (c) of this subsection is only available for motor fuel otherwise subject to tax under this chapter. [I.C., § 63-2407, as added by 1983, ch. 158, § 4, p. 436; am. 1987, ch. 209, § 1, p. 442; am. 1989, ch. 406, § 1, p. 993; am. 1995, ch. 132, § 2, p. 565; am. 1995, ch. 303, § 1, p. 1051; am. 1996, ch. 223, § 2, p. 731; am. 1998, ch. 103, § 4, p. 353; am. 2002, ch. 30, § 3, p. 37; am. 2007, ch. 37, § 2, p. 88; am. 2007, ch. 288, § 2, p. 817.]

STATUTORY NOTES

Amendments. — This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 37, in subsection (7), deleted “received during the reporting period and included in the report” following “motor fuel” in the introductory language; in subsection (7)(a), added the language beginning “imported or blended during the reporting period”; rewrote subsection (7)(b), which formerly read: “Biodiesel, in whole or in part, deduct the number of gallons of agricultural products or animal fats or the wastes of such products contained in the fuel”; and added subsections (7)(c) and (7)(e), and made a related redesignation.

The 2007 amendment,*by ch. 288, in subsection (4), in the first sentence, substituted “two percent” for “one percent” and deleted “the expense incurred on behalf of the state of Idaho in collecting and remitting motor fuel tax moneys, maintaining necessary records for the state, preparing necessary reports and remittances in compliance with this chapter, and for” preceding “loss from evaporation,” and deleted the former last four sentences, which read: “The licensed distributor may, in

addition to the above, deduct the number of gallons equal to one percent (1%) of the total number of gallons received during the preceding calendar month, less the total number of gallons deducted under subsections (1) through (3) of this section, to cover shrinkage, evaporation, spillage and handling losses of a retail dealer. The latter deductions are to be allowed only upon filing with the commission satisfactory evidence as may be prescribed by it indicating the credit allowance has been made in favor of the retail dealer or paid to him. The evidence shall be submitted together with the report wherein this portion of the deduction is claimed. A licensed distributor who sells and delivers motor fuel directly to the consumer and not for resale shall, with respect to those sales, be deemed a retail dealer for the purposes of this section”; and deleted former subsection (6), which pertained to sales made on or after July 1, 1995, and redesignated former subsection (7) as (6).

Compiler’s Notes. — For this section as effective until December 1, 2007, see the preceding section, also numbered § 63-2407.

Effective Dates. — Section 7 of S.L. 2007, ch. 288 provided that the act should take effect on December 1, 2007.

63-2408. Aircraft engine fuel tax. — (1) An excise tax is hereby imposed on all aircraft engine fuel received in this state. The tax is to be paid by the distributor, and measured by the total number of gallons received by him, at the rate of five and one-half cents (5 1/2¢) per gallon of aviation gasoline, and four and one-half cents (4 1/2¢) per gallon of jet fuel. The tax, together with any penalty and/or interest due, shall be remitted with the monthly distributor’s report required in section 63-2406, Idaho Code.

(2) For gasoline, other than aircraft engine fuel, used in aircraft engines, the refund of gasoline tax provided in section 63-2410, Idaho Code, shall be

the amount of gasoline tax paid less the aviation gasoline fuel tax required in this section.

(3) A tax is hereby imposed on fuel which is placed into the fuel supply tank of aircraft in this state on which tax is not collected under subsection (1) of this section, the tax shall be payable at the rate established in subsection (1) of this section, to the commission by the user or consumer of the fuels and shall be a debt owing to the state until it is paid. The tax shall be imposed without regard to whether the fuel is used in the performance of a government contract. [I.C., § 63-2408, as added by 1983, ch. 158, § 4, p. 436; am. 1991, ch. 306, § 2, p. 802; am. 1995, ch. 132, § 3, p. 565.]

STATUTORY NOTES

Prior Laws. — Former § 63-2408 was repealed. See Prior Laws, § 63-2401.

63-2409. License of distributors. [Repealed.]

STATUTORY NOTES

Prior Laws. — A former § 63-2409 was repealed. See Compiler's notes, § 63-2401.

Compiler's Notes. — This section, which comprised I.C., § 63-2409, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 3, p. 169; am. 1994, ch. 41, § 1, p. 69; am. 1994, ch. 344, § 2, p. 1080, was repealed by S.L. 1995, ch. 132, § 4, effective July 1, 1995.

63-2410. Refund of gasoline tax procedure. — (1) Any person who shall purchase fifty (50) gallons or more, and use the gasoline in motor vehicles operated on highways outside of the state of Idaho where a duplicate tax is assessed for the same gasoline, shall be entitled to refund when a claim is presented to the commission in the manner required in subsection (5)(c) of this section. Claimant shall present to the commission a statement accompanied by a verification of the use determined by an audit of his operations conducted as prescribed by the tax commission; or his claim may be verified by the filing of a receipt or proof showing the payment of tax on the gasoline used in any other state.

(2) Any person who shall purchase within any one (1) calendar year fifty (50) gallons or more of gasoline used for the purposes described in this subsection shall be entitled to be refunded the amount of gasoline tax previously paid on that gasoline. Exempt uses are:

- (a) Operating stationary gasoline engines;
- (b) Propelling equipment or vehicles which are not licensed to be operated on a highway;
- (c) Operating commercial motor boats; and
- (d) Propelling an all-terrain vehicle that is not required to be registered pursuant to chapter 4, title 49, Idaho Code, or chapter 71, title 67, Idaho Code.

(3) No refund of gasoline tax shall be allowed for any gasoline which is:

- (a) Used in motor vehicles required to be licensed or used in any motor vehicle exempt from registration by reason of the ownership or residence; or

(b) Aircraft engine fuel placed in aircraft, provided however, if tax has been paid at the rate provided in section 63-2405, Idaho Code, on any motor fuel placed in the fuel supply tank of an aircraft the user of the fuel may apply for a refund of the difference between the tax paid on the fuel and the tax imposed in section 63-2408, Idaho Code; or

(c) Used in recreational vehicles except all-terrain vehicles exempted as provided in subsection (2)(d) of this section; or

(d) Used in noncommercial motor boats or in boats operated by a governmental entity.

(4) Any licensed distributor paying the gasoline tax and/or aircraft engine fuel tax to the state of Idaho erroneously shall be allowed a credit or refund of the amount of tax paid by him if a written claim for refund is filed with the commission within three (3) years after the date those taxes were paid. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from the date taxes to be refunded or credited were paid to the commission.

(5)(a) All claims for refund of gasoline taxes arising under subsection (1), (2) or (3)(b) of this section shall be filed in conjunction with the claimant's income tax return due pursuant to chapter 30, title 63, Idaho Code. The gasoline tax refund claimed shall be tax paid on gasoline actually purchased during the taxable year to which the income tax return relates. The gasoline tax refund due shall be offset against any other taxes, penalties or interest due before any balance is refunded by the commission to the claimant. Subject to a limitation as to the amount of refund to be claimed as the commission may provide by rule, refund claims may be submitted and paid on a monthly basis and reconciled on the income tax return when it is filed.

(b) If a claimant is not required to file an income tax return, the refund claim shall be made on forms and in the manner as the commission may provide. The claim shall relate to taxes paid on gasoline actually purchased in the calendar year preceding the filing and the claim shall be due on or before April 15 following the close of the calendar year.

(c) Claims for refunds under subsection (1) or (2) of this section shall be filed in the manner prescribed in section 63-3072, Idaho Code. Such credit or refund shall include interest at the rate established in section 63-3045, Idaho Code, computed from sixty (60) days following the later of the due date of the claimed refund under subsection (5)(a) or (5)(b) of this section or the filing of the claim. No refund shall be paid under this section unless a written claim for such refund has been filed with the commission within three (3) years after the due date, including extensions, of the income tax return in regard to which the claim relates or the due date of the claim established in paragraph (b) of this subsection (5).

(d) The commission may require that all claims be accompanied by the original signed invoice or invoices issued to the claimant, showing the total amount of gasoline on which a refund is claimed and the reason, the amount of the tax and any additional information required by the commission. Each separate delivery shall constitute a purchase and a separate invoice shall be prepared, at least in duplicate, to cover the

delivery. All invoices, except those prepared by a computer or similar machine, shall be prepared in ink or double-spaced carbon shall be used between the original and first duplicate.

(6)(a) Should the commission find that the claim contains errors, it may correct the claim and approve it as corrected, or the commission may require the claimant to file an amended claim. The commission may require any person who makes a claim for refund to furnish a statement under oath, giving his occupation, description of the machine or equipment in which the gasoline was used, the place where used and any other information as the commission may require. If the commission determines that any claim has been fraudulently presented, or is supported by an invoice or invoices fraudulently made or altered, or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the commission may reject the claim in full. If the claim is rejected, the commission may suspend the claimant's right to any refund for purchases made during a period not to exceed one (1) year beginning with the date the rejected claim was filed, and it shall take all other action deemed appropriate.

(b) The commission has authority, in order to establish the validity of any claim, to examine the books and records of the claimant for that purpose, and failure of the claimant to accede to the demand for the examination may constitute a waiver of all rights to the refund claimed.

(7) In the event of the loss or destruction of the original invoice or invoices, the person claiming a refund may submit a duplicate copy of the invoice certified by the vendor, but payment based on the duplicate invoice shall not be made until one (1) year after the date on which the gasoline was purchased. [I.C., § 63-2410, as added by 1983, ch. 158, § 4, p. 436; am. 1986, ch. 175, § 1, p. 84; am. 1993, ch. 47, § 4, p. 119; am. 1995, ch. 132, § 5, p. 565; am. 1995, ch. 348, § 2, p. 1142; am. 1998, ch. 196, § 1, p. 707; am. 2001, ch. 104, § 2, p. 343; am. 2002, ch. 30, § 4, p. 37; am. 2004, ch. 235, § 2, p. 693.]

STATUTORY NOTES

Prior Laws. — Former § 63-2410 was repealed. See Prior Laws, § 63-2401.

Amendments. — This section was amended by two 1995 acts — ch. 132, § 5, effective July 1, 1995 and ch. 348, § 2, effective January 1, 1996 — which do not conflict and have been compiled together.

The 1995 amendment, by ch. 132, § 3, in subsection (3) added “which is” following “any gasoline”; in subsection (3)(b) added “, provided however, if tax has been paid at the rate provided in section 63-2405, Idaho Code, on any motor fuel placed in the fuel supply tank of an aircraft the user of the fuel may apply for a refund of the difference between the tax paid on the fuel and the tax imposed in section 63-2408, Idaho Code,” following “placed in an aircraft”; in subsection (3)(d) added “or in boats operated by a governmen-

tal entity” following “motor boats”; in subsection (5)(a) in the first sentence added a comma following “under subsection (1)” and added “or (3)(b)” preceding “of this section”.

The 1995 amendment, by ch. 348, § 2, in subsection (5)(a) in the last sentence substituted “rule” for “regulation” following “may provide by” and substituted “monthly” for “quarterly” following “submitted and paid on a”.

Effective Dates. — Section 5 of S.L. 1993, ch. 47 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993. The provisions of this act apply to all returns, amendments to returns, claims for refund or credit of tax, notices of deficiency and other actions taken

after the effective date of this act without regard to the taxable year effected, unless the statutes of limitations, as provided in sections 63-3068 and 63-3072, Idaho Code, in effect on December 31, 1992, would have prevented the action on the effective date of this bill."

63-2411. Purchase of gasoline by retail dealers. — It shall be unlawful for any retail dealer in gasoline or aircraft engine fuel or for any person in the state of Idaho other than a licensed distributor to purchase, receive or accept any gasoline from any other person, unless that person is a licensed distributor. Any person in violation of these provisions shall be guilty of a misdemeanor. [I.C., § 63-2411, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Prior Laws. — Former § 63-2411 was repealed. See Prior Laws, § 63-2401.

63-2412. Distribution of tax revenues from tax on gasoline and aircraft engine fuel. — (1) The revenues received from the taxes imposed by sections 63-2402 and 63-2421, Idaho Code, upon the receipt or use of gasoline, and any penalties, interest, or deficiency additions, shall be distributed periodically as follows:

(a) An amount of money equal to the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the gasoline tax requirements by the commission at the end of each fiscal year shall be distributed as listed in paragraph (e) of this subsection.

(b) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose.

(c) As soon as possible after the beginning of each fiscal year, the sum of two hundred fifty thousand dollars (\$250,000) shall be distributed to the railroad grade crossing protection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 62-304C, Idaho Code.

(d) As soon as possible after the beginning of each fiscal year, the sum of one hundred thousand dollars (\$100,000) shall be distributed to the local bridge inspection account in the dedicated fund, to pay the amounts from the account pursuant to the provisions of section 40-703, Idaho Code.

(e) From the balance remaining with the commission after distributing the amounts in paragraphs (a) through (d) of subsection (1) of this section:

1. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the waterways improvement account, as created in chapter 15, title 57, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the waterways

improvement account under the provisions of this paragraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the waterways improvement account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code;

2. One and twenty-eight hundredths percent (1.28%) shall be distributed as follows: sixty-six percent (66%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the off-road motor vehicle account, as created in section 57-1901, Idaho Code. Up to twenty percent (20%) of the moneys distributed to the off-road motor vehicle account by this subparagraph may be used by the department of parks and recreation to defray administrative costs. Any moneys unused at the end of the fiscal year by the department of parks and recreation shall be returned to the state treasurer for deposit in the off-road motor vehicle account. Thirty-three percent (33%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed into the park and recreation capital improvement account as created in section 57-1801, Idaho Code. One percent (1%) of the one and twenty-eight hundredths percent (1.28%) shall be distributed to the search and rescue fund created in section 67-2913, Idaho Code; and

3. Forty-four hundredths percent (.44%) shall be distributed to the park and recreation capital improvement account as created in section 57-1801, Idaho Code, to be used solely to develop, construct, maintain and repair roads, bridges and parking areas within and leading to parks and recreation areas of the state.

4. The balance remaining shall be distributed to the highway distribution account created in section 40-701, Idaho Code.

(2) The revenues received from the taxes imposed by section 63-2408, Idaho Code, and any penalties, interest, and deficiency amounts, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid from the state refund account, and those moneys are hereby continuously appropriated.

(b) The balance remaining of all the taxes collected shall be distributed to the state aeronautics account, as provided in section 21-211, Idaho Code. [I.C., § 63-2412, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 4, p. 169; am. 1984, ch. 195, § 35, p. 445; am. 1985, ch. 33, § 1, p. 66; am. 1985, ch. 253, § 9, p. 586; am. 1986, ch. 73, § 8, p. 277; am. 1986, ch. 99, § 3, p. 277; am. 1988, ch. 253, § 1, p. 487; am. 1990, ch. 395, § 1, p. 1106; am. 1991, ch. 120, § 2, p. 259; am. 1993, ch. 301, § 1, p. 1116; am. 1994, ch. 280, § 6, p. 867; am. 1994, ch. 315, § 3, p. 1001; am. 1997, ch. 50,

§ 1, p. 84; am. 2000, ch. 100, § 1, p. 220; am. 2000, ch. 186, § 3, p. 456; am. 2002, ch. 174, § 6, p. 508.]

STATUTORY NOTES

Cross References. — Railroad grade crossing protection fund, § 62-304A.

Prior Laws. — Former §§ 63-2412 — 63-2415 were repealed. See Prior Laws, § 63-2401.

Amendments. — This section was amended by two 1994 acts — ch. 315, § 3, effective July 1, 1994 and ch. 280, § 6, effective July 1, 1995 — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 280, § 6, deleted former paragraph (e) of subsection (1) and redesignated former paragraph (f) of subsection (1) as paragraph (e).

The 1994 amendment, by ch. 315, § 3, in paragraph (c) of subsection (1), substituted “two hundred fifty thousand dollars (\$250,000)” for “one hundred fifty thousand dollars (\$150,000)”.

This section was amended by two 2000 acts — ch. 100, § 1 and ch. 186, § 3, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 100, § 1, substituted “percent” for “per cent” throughout the section; in subparagraph (1)(e)2., substituted “subparagraph” for “subpart”; and in subparagraph (1)(e)3., substituted “solely to develop, construct, maintain and repair roads, bridges and parking areas” for “solely to improve roads and bridges”.

The 2000 amendment, by ch. 186, § 3,

substituted “percent” for “per cent” throughout the section; in the last sentence of subparagraph (1)(e)1., substituted “fund” for “account”, substituted “section 67-2913” for “section 67-2903”; and in subparagraph (1)(e)2., substituted “fund” for “account”, and substituted “section 67-2913” for “67-2903”.

Compiler’s Notes. — Section 3 of S.L. 1985, ch. 33 read: “All distributions of taxes collected under the provisions of section 63-2412, Idaho Code, made by the commission during fiscal year 1985 are hereby approved and confirmed.”

Effective Dates. — Section 4 of S.L. 1985, ch. 33 declared an emergency and provided that § 1 [§ 63-2412] should be in full force and effect on and after its passage and approval retroactive to July 1, 1984. Approved March 11, 1985.

Section 4 of S.L. 1991, ch. 120 declared an emergency and provided that Section 1 of this act shall be in full force and effect on and after April 1, 1991. Sections 2 and 3 of this act shall be in full force and effect on and after July 1, 1991. Approved March 28, 1991.

Section 8 of S.L. 1994, ch. 280 provided that §§ 1, 3, 4 and 5 of this act shall be in full force and effect on and after July 1, 1994. Sections 2, 6 and 7 of this act shall be in full force and effect on and after July 1, 1995.

Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

OPINIONS OF ATTORNEY GENERAL

A portion of fuel tax revenues allocated to the Idaho department of parks and recreation pursuant to subsection (1)(e) of this section may be used to offset the general administrative costs of operating the respective recreation programs. OAG 96-4.

The allocation of road and bridge improvement moneys within the capital improvement account is within the discretion of the board. OAG 96-4.

The legislature has made a determination that a percentage of fuel tax revenue generated statewide shall be allocated to the park and recreation capital improvement account established pursuant to § 57-1801. The expenditure of capital improvement funds is left to the discretion of the board. The board’s discretion remains subject to the legislative and budgetary process. OAG 96-4.

63-2413 — 63-2415. [Reserved.]

63-2416. Tax imposed. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, which comprised I.C., § 63-2416, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 5, p. 169; am. 1992, ch. 106, § 2, p. 327; am. 1994,

ch. 344, § 3, p. 1080; am. 1995, ch. 348, § 3, p. 1142; am. 1996, ch. 223, § 3, p. 731; am. 2000, ch. 155, § 2, p. 392, was repealed by S.L. 2002, ch. 174, § 7, p. 508.

63-2417. Use tax imposed. [Repealed.]**STATUTORY NOTES**

Prior Laws. — A former § 63-2417 was repealed. See Prior Laws, § 63-2401.

Compiler's Notes. — This section, which comprised I.C., § 63-2417, as added by 1983,

ch. 158, § 4, p. 436; am. 1984, ch. 87, § 6, p. 169, was repealed by S.L. 1994, ch. 344, § 4, effective July 1, 1994.

63-2418. Distribution of tax revenues from tax on special fuels. —

The revenues received from the tax imposed by this chapter upon the receipt of special fuel and any penalties, interest, or deficiency additions, or from the fees imposed by the commission under the provisions of section 63-2424 or 63-2438, Idaho Code, shall be distributed as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the special fuels tax provisions by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the special fuels tax requirements by the commission at the end of each fiscal year shall be distributed to the highway distribution account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the commission to be paid under this chapter shall be paid from the state refund account, those moneys being hereby continuously appropriated.

(3) The balance remaining with the commission after distributing the amounts specified in subsections (1) and (2) of this section shall be distributed to the highway distribution account, established in section 40-701, Idaho Code. [I.C., § 63-2418, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 7, p. 169; am. 1984, ch. 195, § 36, p. 445; am. 1985, ch. 33, § 2, p. 66; am. 1985, ch. 253, § 10, p. 586; am. 1986, ch. 73, § 9, p. 201; am. 2000, ch. 155, § 3, p. 392; am. 2002, ch. 174, § 8, p. 508.]

STATUTORY NOTES

Cross References. — State refund account, § 63-3067.

Prior Laws. — Former § 63-2418 was repealed. See Prior Laws, § 63-2401.

Effective Dates. — Section 4 of S.L. 1985, ch. 33 declared an emergency and provided that section 1 of the act [§ 63-2412] should be

in full force and effect on and after its passage and approval retroactive to July 1, 1984. Approved March 11, 1985.

Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

63-2419. Special fuels dealers' licenses. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised I.C., § 63-2419, as added by 1983, ch. 158, § 4, p. 436; am. 1992, ch. 106, § 3, p.

327; am. 1994, ch. 344, § 5, p. 1080, was repealed by S.L. 1995, ch. 132, § 6, effective July 1, 1995.

63-2420. Returns, payments and deductions by special fuels dealers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-2420, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 8, p. 169; am. 1992, ch. 106, § 4, p. 327; am. 1995, ch. 303, § 2, p. 1051, was repealed by S.L. 1998, ch. 103, § 5, effective July 1, 1998.

63-2421. Use tax — Returns and payment of use tax by consumers. — (1) For the privilege of using the highways of this state, any person who consumes motor fuels in a motor vehicle licensed or required to be licensed by the laws of this state, or which is required to be licensed under the laws of another jurisdiction and is operated on the highways of this state upon which the tax imposed by section 63-2402, Idaho Code, has not been paid or is subject to credit or refund under IFTA and which fuel is not exempted from tax by this chapter, shall be liable for the tax.

(2) Except for motor vehicles licensed under IFTA or operating with a temporary permit under section 49-432, Idaho Code, a person liable under subsection (1) of this section shall report the amount of tax liability and pay the taxes due in conjunction with his income or franchise tax return due under the provisions of chapter 30, title 63, Idaho Code, in the manner and form prescribed by the commission. Payment of motor fuels taxes shall be made in conjunction with any other taxes due on that return and motor fuels taxes due may be offset against refunds of any other taxes shown on the return to be due the taxpayer.

(3) In the case of a person liable under subsection (1) of this section other than one who consumes motor fuels in a motor vehicle described in the exception in subsection (2) of this section and not required to file a return under chapter 30, title 63, Idaho Code, the tax shall be paid annually, on a calendar year basis, in the manner and form required by the commission. The return and payment for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year.

(4) In the case of a person liable under subsection (1) of this section whose motor vehicles are licensed or required to be licensed under IFTA as provided in sections 63-2438 and 63-2439, Idaho Code, or operating with a temporary permit under section 49-432, Idaho Code, the tax shall be paid in the manner required by those provisions. [I.C., § 63-2421, as added by 1983, ch. 158, § 4, p. 436; am. 1992, ch. 106, § 5, p. 327; am. 1995, ch. 132, § 7, p. 565; am. 1997, ch. 86, § 2, p. 205; am. 2002, ch. 30, § 5, p. 37; am. 2002, ch. 174, § 9, p. 508; am. 2005, ch. 28, § 2, p. 139.]

STATUTORY NOTES

Amendments. — This section was amended by two 2002 acts — act 30, § 5, effective July 1, 2002, and act 174, § 9, effective retroactively to July 1, 1996 — which are compatible and have been compiled together.

The 2002 amendment, by ch. 30, § 5, deleted “trip” before “permit” near the beginning

of the first sentence of subsection (2).

The 2002 amendment, by ch. 174, § 9, divided the section into three paragraphs and added the subsection designations (1) through (3); substituted “motor fuels” for “special fuels” throughout the section; in subsection (1) added “For the privilege of using the highways

of this state" at the beginning, and at the end added the phrase beginning "or which is required to be licensed"; in the first sentence of subsection (2), after "section 49-432, Idaho Code", substituted "persons liable under subsection (1) of this section" for "which is subject to the tax imposed by section 63-2416, Idaho Code"; near the beginning of subsection (3) added "liable under subsection (1) of this

section", substituted "subsection (2)" for "subsection (1)", and deleted "who is subject to the tax imposed by section 63-2416, Idaho Code" after "chapter 30, title 63, Idaho Code"; added subsection (4); and made related changes.

Effective Dates. — Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

63-2422. Credits and refunds to dealers. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-2422, as added by 1983, ch. 158, § 4, p. 436; am. 1986, ch. 175, § 2, p.

464, was repealed by S.L. 1998, ch. 103, § 5, effective July 1, 1998.

63-2423. Credits and refunds to consumers. — (1) Any person who has paid his special fuels tax directly to the vendor from whom it was purchased shall be refunded the amount of:

(a) Except as provided in subsection (2) of this section, any special fuels tax paid on special fuels used for purposes other than operation or propulsion of motor vehicles upon the highways in the state of Idaho;

(b) Any tax paid on special fuels used in motor vehicles owned or leased and operated by an instrumentality of the federal government or of the state of Idaho, including the state and all of its political subdivisions;

(c) Any tax paid on special fuels used in motor vehicles to which gaseous special fuel is delivered and which displays a valid gaseous special fuels permit under section 63-2424, Idaho Code;

(d) Any special fuels tax paid on special fuels exported for use outside the state of Idaho. Special fuels carried from the state in the fuel tank of a motor vehicle will not be deemed to be exported from the state unless it is subject to a like or similar tax in the jurisdiction to which it is taken and that tax is actually paid to the other jurisdiction; and

(e) Any tax, penalty or interest erroneously or illegally paid or collected.

(2) No refund of special fuels tax shall be paid on:

(a) Special fuels used in a recreational vehicle; or

(b) Special fuels used in noncommercial motor boats or in motor boats operated by a governmental entity; or

(c) Special fuels used while idling a registered motor vehicle, pursuant to the definition of "idling" as provided in section 63-2401, Idaho Code.

(3) Refunds authorized in this section shall be claimed in the same manner as applies to refunds of gasoline tax under section 63-2410, Idaho Code, and shall be subject to interest computed pursuant to subsection (5) of that section. [I.C., § 63-2423, as added by 1983, ch. 158, § 4, p. 436; am. 1995, ch. 348, § 4, p. 1142; am. 1997, ch. 375, § 1, p. 1205; am. 1998, ch. 103, § 6, p. 353; am. 1998, ch. 196, § 2, p. 707; am. 2004, ch. 265, § 2, p. 745.]

STATUTORY NOTES

Prior Laws. — Former § 63-2423 was repealed. See Prior Laws, § 63-2401.

Amendments. — This section was amended by two 1998 acts — ch. 103, § 6, and ch. 196, § 2, both effective July 1, 1998, which do not conflict and have been compiled together.

The 1998 amendment, by ch. 103, § 6, in subdivision (1)(a), inserted “operation or” preceding “propulsion,” and in the second sentence of subdivision (1)(d), substituted “jurisdiction” for “state” in two instances.

The 1998 amendment, by ch. 196, § 2, added “and shall be subject to interest computed pursuant to subsection (5) of that section” at the end of subsection (3).

63-2424. Gaseous fuels. — (1) In the case of special fuels which are in a gaseous form, the commission shall provide by rule the method to be used for converting the measurement of the fuel to the equivalent of gallons for the purpose of applying tax rates. The method provided shall cause the tax rate provided in section 63-2402, Idaho Code, to apply to an amount of gaseous fuels having energy equal to one (1) gallon of gasoline.

(2) As an alternative to the provisions of subsection (1) of this section, an annual fee in lieu of the excise tax may be collected on a vehicle powered by gaseous fuels. The rate of the fee shall be based on the following schedule for all types of gaseous fuels as adjusted by the formula for proration set out below. The permits shall be sold by gaseous fuels vendors dispensing gaseous fuels into motor vehicles.

VEHICLE TONNAGE (GVW)	FEE
0 — 8,000	\$ 60.00
8,001 — 16,000	\$ 89.00
16,001 — 26,000	\$179.00
26,001 and above	\$208.00

Permits for vehicles which are converted to gaseous fuels after the first of July in any year shall have the fee prorated for the appropriate number of months until renewal. The commission shall provide by rule the method to be used for converting the measurement of fuel to the equivalent of gallons for the purpose of applying increases in tax rates after this law becomes effective. A decal issued by the commission shall be displayed in any vehicle for which a permit is issued hereunder as evidence that the annual fee has been paid in lieu of the fuel tax. This decal shall be displayed in a conspicuous place. [I.C., § 63-2424, as added by 1983, ch. 158, § 4, p. 436; am. 1991, ch. 334, § 1, p. 867; am. 1995, ch. 132, § 8, p. 565; am. 1998, ch. 103, § 7, p. 353; am. 2002, ch. 174, § 10, p. 508.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-2424 — 63-2426 were repealed. See Prior Laws, § 63-2401.

Effective Dates. — Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

63-2425. Dyed fuel and other untaxed fuel prohibited for use on a highway. — (1) Except as provided in subsection (2) of this section, no person shall operate a motor vehicle on a highway in this state if the fuel supply tanks of the vehicle contain diesel fuel which has been dyed or

marked under the provisions of 26 U.S.C. 4082 and regulations adopted thereunder, or under the clean air act and regulations adopted thereunder, or contain other motor fuel on which the tax under section 63-2402, Idaho Code, has not been paid.

(2) The following vehicles may use dyed fuel on the highway but are subject to the tax under section 63-2402, Idaho Code, unless exempt under other provisions of this chapter:

(a) State and local government vehicles;

(b) Any vehicles which may use dyed fuel on the highway under the provisions of 26 U.S.C. 4082 or regulations adopted thereunder. [I.C., § 63-2425, as added by 1995, ch. 348, § 5, p. 1142; am. 2002, ch. 174, § 11, p. 508.]

STATUTORY NOTES

Federal References. — The clear air act referred to in subsection (1), is codified as 42 U.S.C.S. § 7401 et seq.

2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

Effective Dates. — Section 14 of S.L.

63-2426. [Reserved.]

63-2427. Administration. — The commission shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement of those provisions. [I.C., § 63-2427, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Prior Laws. — Former § 63-2427 was repealed. See Prior Laws, § 63-2401.

63-2427A. Distributor's license. [Effective until December 1, 2007.] — (1) It is unlawful for a person to act as a distributor without a license unless the person only purchases fuel which is either or both:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of

filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(5) No distributor's license shall be transferable.

(6) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions. [I.C., § 63-2427A, as added by 1995, ch. 132, § 9, p. 565; am. 2003, ch. 96, § 52, p. 281.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective December 1, 2007, see the following section, also numbered § 63-2427A.

63-2427A. Distributor's license. [Effective December 1, 2007.] —

(1) It is unlawful for a person to act as a distributor without a license unless the person only purchases fuel which is either or both:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor.

(2) Application for a license shall be made upon forms furnished and in a manner prescribed by the commission and shall contain information as it deems necessary, and be accompanied by a bond in the amount required in section 63-2428, Idaho Code.

(3) Upon receipt of the application and bond in proper form the commission shall issue the applicant a license to act as a distributor unless the applicant:

(a) Is a person who formerly held a license under the provisions of this chapter, any predecessor statute, under the laws of any other jurisdiction, or under the laws of the United States which license, prior to the time of

filing this application, had been revoked for cause within five (5) years from the date of such application; or

(b) Is a person who has outstanding fuel tax liabilities to this state, any other jurisdiction or the United States government; or

(c) Is a person who has been convicted, under the laws of the United States or any state or jurisdiction or subdivision thereof, of fraud, tax evasion, or a violation of the laws governing the reporting and payment of fees or taxes for petroleum products within five (5) years from the date of making such application; or

(d) Is a person who has been convicted of a felony or been granted a withheld judgment following an adjudication of guilt of a felony within five (5) years from the date of such application; or

(e) Who is not the real party in interest and the real party in interest is a person described in subsection (3)(a), (3)(b), (3)(c) or (3)(d) of this section.

(4) The commission shall not issue a distributor's license to any person until that person has submitted to the commission a consent to be sued in Idaho district court for purposes of the state enforcing any provision of this chapter. The consent shall be submitted in such form and include such information as the commission may by rule require.

(5) Upon approval of the application the distributor's license shall be valid until it is suspended or revoked for cause, for failure to maintain the bond required in section 63-2428, Idaho Code, for failure to file returns required in this chapter, for failure to pay all taxes and fees due with a return required in this chapter, or is otherwise canceled.

(6) No distributor's license shall be transferable.

(7) The commission shall furnish each licensed distributor with a list of all distributors licensed pursuant to this section. The list shall be supplemented by the commission from time to time to reflect additions and deletions. [I.C., § 63-2427A, as added by 1995, ch. 132, § 9, p. 565; am. 2003, ch. 96, § 52, p. 281; am. 2007, ch. 288, § 3, p. 817.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 288, added subsection (4) and redesignated the subsequent subsections accordingly.

Compiler's Notes. — For this section as

effective until December 1, 2007, see the preceding section, also numbered § 63-2427A.

Effective Dates. — Section 7 of S.L. 2007, ch. 288 provided that the act should take effect on December 1, 2007.

63-2427B. Licensed gaseous fuels distributors — Reports. —

(1) In lieu of the distributor's license required by section 63-2427A, Idaho Code, the commission may issue a gaseous fuels distributor's license to a distributor who applies for the license and who does not deal in fuel, other than gaseous fuels, except fuel which is either:

(a) Motor fuel on which any tax due under this chapter has previously been imposed upon a licensed distributor; or

(b) Dyed fuel upon which the transfer fee imposed in section 41-4909, Idaho Code, has been imposed upon a licensed distributor.

(2) Licensed gaseous fuels distributors shall, not later than the last day of each calendar month or for such other reporting period as the commission

may authorize, render to the commission an accurate report of all gaseous fuels that are subject to tax under this chapter during the preceding reporting period. The report shall be made in the manner and on forms required by the commission and shall include such other information as the commission may require for the proper administration of this chapter. [I.C., § 63-2427B, as added by 1998, ch. 103, § 8, p. 353; am. 2003, ch. 96, § 53, p. 281.]

63-2427C. Revocation and suspension of licensẽ — Penalties. —

(1) A license issued under section 63-2427A or 63-2427B, Idaho Code, shall be held only by persons actively engaged in activities requiring a license under this chapter. Any person not so engaged shall forthwith surrender his license to the commission for cancellation.

(2) Whenever any person fails to comply with any provision of this chapter relating to the receipt, purchase, sale or offering for sale or distribution of motor fuel or any rules of the commission relating to motor fuels taxes prescribed and adopted under this chapter, the commission may revoke or suspend any license held by the person or may deny a new license to such person.

(3) The commission may revoke the license of a person not actively engaged in activities requiring a license under this section.

(4) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(5) A license, held by a person who for a period of twelve (12) consecutive months reports no motor fuels activity under this chapter, shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the license was issued.

(6) A person who engaged in activities requiring a license under this chapter without such license or after a license has been revoked or suspended, and any person who is a responsible person, as defined in section 63-3627, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-2434, Idaho Code. [I.C., § 63-2427C, as added by 2006, ch. 60, § 1, p. 186.]

63-2428. Bonding. — (1) At the time an application for a distributor's license under section 63-2427A, Idaho Code, is submitted to the commission, the applicant shall file a bond with the commission conditioned upon faithful performance of all of the requirements of this chapter. The total amount of the bond shall be fixed by the commission and shall be equivalent to at least twice the estimated average tax liability for the reporting period for which the applicant will be required to file a distributor's report under section 63-2406, Idaho Code. The bond required by this section shall in no case be less than one thousand dollars (\$1,000) nor more than two hundred

thousand dollars (\$200,000). Based on prior years' experience, the total amount required to be secured by the bond may be increased or reduced by the commission at any time. The bond will be waived if the commission is satisfied that the distributor has the financial responsibility to meet the required bond amount. Financial responsibility may be determined by the commission upon review of all relevant public documents including appropriate county records and records of tax payments to the state of Idaho. The distributor can be required to provide a commercial credit rating, balance sheet, or income statement to demonstrate present financial solvency, i.e. ownership of real and/or personal property, the unencumbered value of which exceeds the bond amount otherwise required. If such financial solvency is established, and if the distributor has been doing business in Idaho as a licensed distributor for five (5) or more consecutive years without a default in the payment of taxes imposed in this chapter, financial responsibility shall be presumed. Any bond given in conjunction with this chapter shall be a continuing instrument, and shall cover the period during which the license in connection with which the bond is given is in effect, unless the surety on the bond is released or discharged by the commission. Any surety on any bond furnished by a licensee shall be discharged and released from any and all liability to the state accruing on the bond after the expiration of thirty (30) days from the date upon which the surety shall have lodged with the commission a written request to be released and discharged. The request shall not operate to relieve, release or discharge the surety from any liability accrued, or which will accrue, before the expiration of the thirty (30) day period. The commission shall promptly, upon receipt of the notice of the request, notify the licensee and require him to furnish a new bond. Unless the licensee files a new bond with the commission in the amount provided in this section before the expiration of the thirty (30) day period, the commission shall immediately cancel the licensee's license.

(2) In the event that any taxes due under the provisions of this chapter are not paid by a licensed distributor, and the unpaid taxes are assessed by the commission, and after all avenues for appeal of the assessment have been exhausted, the commission may apply the unpaid tax liability against the bond required by this section. [I.C., § 63-2428, as added by 1983, ch. 158, § 4, p. 436; am. 1988, ch. 231, § 1, p. 444; am. 1995, ch. 132, § 10, p. 565; am. 1998, ch. 103, § 9, p. 353.]

STATUTORY NOTES

Prior Laws. — Former § 63-2428 was repealed. See Prior Laws, § 63-2401.

63-2429. Required records. — (1) Every distributor and every special fuels dealer and every person reporting, manufacturing, refining, dealing, transporting or storing gasoline, aircraft engine fuel or special fuels in this state shall keep records, receipts, invoices and other pertinent records as the commission may require. Records required and all other relevant books and records shall be available for inspection by the commission at all times during regular record keeper's business hours.

(2) Records required in subsection (1) of this section shall be kept for a period of three (3) years from the date on which the distributor's report or special fuels dealer's return to which they relate was required to be filed with the commission. [I.C., § 63-2429, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Prior Laws. — Former § 63-2429 was repealed. See Prior Laws, § 63-2401.

63-2430. Revocation or cancellation of license. — (1) The commission may revoke the license of a distributor or a carrier licensed in Idaho under the international fuel tax agreement in any of the following circumstances:

- (a) The licensee refuses or neglects to comply with the provisions of this chapter or rules of the commission promulgated pursuant to this chapter;
- (b) When, upon investigation, the commission ascertains or finds that the person to whom the license was issued is no longer engaged in business as a distributor or an Idaho IFTA carrier and has not been so engaged for a period of six (6) months prior to the cancellation; or
- (c) The licensee files a written request with the commission asking that the license be revoked and the commission determines upon investigation, that the licensee is no longer a person required to be a licensed distributor or required to have an IFTA license.

(2) In the case of a cancellation under paragraph (c) of subsection (1) of this section, the cancellation shall not be effective nor shall the licensee's surety be discharged from any bond unless the licensee has paid to the state of Idaho all taxes imposed under this chapter together with all penalties, interest and additional amounts which have accrued.

(3) In the case of revocation of a license under paragraph (a) or (b) of subsection (1) of this section, prior to revoking the license the commission shall give notice of the proposed revocation to the licensee in the manner provided in section 63-3045, Idaho Code, which shall be subject to review as provided in section 63-3045, Idaho Code. If a petition for redetermination of the license revocation is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code. The state tax commission shall not issue a new license after the revocation of a license unless the commission is satisfied that the former holder of the license has filed all returns and reported and paid all taxes, penalty and interest required by this chapter and corrected any other violations of this chapter upon which the revocation was based. [I.C., § 63-2430, as added by 1983, ch. 158, § 4, p. 436; am. 1997, ch. 86, § 3, p. 205.]

STATUTORY NOTES

Prior Laws. — Former § 63-2430 was repealed. See Prior Laws, § 63-2401.

63-2431. Tax in lieu of all other taxes imposed. — The taxes imposed by this chapter shall be in lieu of all other excise taxes, license fees or property taxes imposed upon gasoline, aircraft engine fuel or special fuels by this state or any political subdivision of this state. [I.C., § 63-2431, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Prior Laws. — Former § 63-2431 was repealed. See Prior Laws, § 63-2401.

JUDICIAL DECISIONS

Implied Repeal of Section.

Because § 41-4908 [now § 41-4909] is an inconsistent later statute which has the same subject and purpose as this section, and there is no reasonable alternative to a holding that the later statute impliedly repealed the ear-

lier statute, to the extent the two statutes are inconsistent, § 41-4908 [now § 41-4909] impliedly repeals this section. *V-1 Oil Co. v. Idaho State Tax Comm'n*, 134 Idaho 716, 9 P.3d 519 (2000).

63-2432. Civil action to prevent doing business without license — Injunction. — If the commission determines that any person is engaged in business as a distributor or special fuels dealer without holding a valid license, it may proceed by injunction or other legal process to prevent the continuance of the business, and an injunction enjoining the continuance of the business by any unlicensed person may be granted without bond by any court or judge authorized by law to grant injunctions. [I.C., § 63-2432, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Prior Laws. — Former § 63-2432 was repealed. See Prior Laws, § 63-2401.

63-2433. Doing business without a license — Penalties. — Any person who engages in the business as a distributor or a special fuels dealer without being the holder of a valid license shall be guilty of a misdemeanor. Each day of business without a valid license shall constitute a separate offense. [I.C., § 63-2433, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

Prior Laws. — Former § 63-2433 was repealed. See Prior Laws, § 63-2401.

63-2434. Enforcement provisions. — For the purpose of carrying out its duties to enforce or administer the provisions of this chapter, the commission shall have the powers and duties provided by sections 63-3038, 63-3039, 63-3042 through 63-3066, 63-3068, 63-3071, 63-3074 through 63-3078, and 63-217, Idaho Code, which sections are incorporated by reference herein as though set out verbatim. [I.C., § 63-2434, as added by

1983, ch. 158, § 4, p. 436; am. 1994, ch. 344, § 6, p. 1080; am. 1996, ch. 322, § 62, p. 1029.]

STATUTORY NOTES

Prior Laws. — Former § 63-2434 was repealed. See Prior Laws, § 63-2401.

63-2435. Taxes are state money. [Repealed effective December 1, 2007.] — When a distributor sells gasoline or aircraft engine fuel subject to tax under this chapter or a special fuels dealer sells special fuels subject to tax under this chapter, a portion of the receipts from those sales equal to the amount of tax required to be paid upon the fuels sold shall, immediately upon receipt by the distributor or special fuels dealer, be state money and shall be held in trust for the state of Idaho and for payment to the commission in the manner and at the times required by this chapter. This tax money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates and shall not be subject to encumbrance, security interest, execution of seizure on account of any debt owed by the distributor or the special fuels dealer to any creditor other than the commission. [I.C., § 63-2435, as added by 1983, ch. 158, § 4, p. 436.]

STATUTORY NOTES

Compiler's Notes. — This section, which ch. 158, § 4, p. 436, is repealed by S.L. 2007, comprised I.C., § 63-2435, as added by 1983, ch. 288, § 4, effective December 1, 2007.

63-2436. Reports of importations by carrier — Contents. — The commission may require any railroad or other common carrier, or contract carrier, or any person, other than a licensee, who makes delivery in this state of any gasoline, aircraft engine fuel or special fuels to report in writing to the commission, not later than the last day of each calendar month, all the deliveries for the preceding calendar month. The commission may require information in the reports to include the place of origin and place of destination of the gasoline, aircraft engine fuel or special fuels delivered, the names and addresses of consignors and consignees, loading ticket numbers, number of gallons delivered, and any other information the commission may require. [I.C., § 63-2436, as added by 1983, ch. 158, § 4, p. 436; am. 2001, ch. 104, § 3, p. 343.]

63-2437. Instate pipeline terminal and storage reports. — The commission may require a monthly report from each pipeline terminal located in this state not later than the last day of the next succeeding calendar month. The commission may require information in the report to include the date of withdrawal, bill of lading number, manifest number, or loading ticket number and the origin, consignee, consignor, transportation company, and number of gallons separately indicated of gasoline, aircraft engine fuel and special fuels and any other information as the commission may require. [I.C., § 63-2437, as added by 1983, ch. 158, § 4, p. 436; am. 2001, ch. 104, § 4, p. 343.]

63-2438. International fuel tax agreement (IFTA) license. — (1) It shall be unlawful for any person to consume special fuels in the operation or propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight on the highways of this state unless such motor vehicle is:

(a) Licensed under the provisions of the international fuels tax agreement; or

(b) Operating under a temporary permit under section 49-432, Idaho Code; or

(c) Registered solely for operation in this state under section 49-434, Idaho Code, and is not a vehicle proportionally registered under section 49-435, Idaho Code.

(2) The application for an Idaho IFTA license shall be made to the commission upon a form prepared and furnished by the commission and containing such information as the commission deems necessary. Carriers based in other IFTA jurisdictions must apply to their base jurisdiction to obtain an IFTA license.

(3) No IFTA license shall be transferable.

(4) The commission may collect a fee for issuance of the IFTA license and decal, which fee shall not exceed the cost of issuance. [I.C., § 63-2438, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 9, p. 169; am. 1992, ch. 106, § 6, p. 327; am. 1997, ch. 86, § 4, p. 205; am. 1998, ch. 103, § 10, p. 353; am. 2002, ch. 30, § 6, p. 37.]

63-2439. Reports and payment by holders of an Idaho international fuel tax agreement (IFTA) license. — (1) Each person issued an Idaho IFTA license as required under section 63-2438, Idaho Code, shall file with the commission in the manner and form prescribed by it, the tax report required by the IFTA. Such report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and shall be in lieu of such verification. The report shall show such information as the commission may reasonably require for the proper administration and enforcement of this chapter.

(2) The tax report shall be accompanied by the remittance covering the total tax, penalty and interest due. The tax due shall be calculated by multiplying the tax rate per gallon for each IFTA jurisdiction by the number of taxable gallons of fuel taxable in each IFTA jurisdiction, less any tax already paid upon purchases of fuel in that jurisdiction. The taxable gallons consumed shall be calculated by dividing the taxable miles traveled in each jurisdiction by such motor vehicles by the fleet average miles per gallon of such motor vehicles. [I.C. § 63-2439, as added by 1983, ch. 158, § 4, p. 436; am. 1987, ch. 89, § 1, p. 168; am. 1987, ch. 298, § 1, p. 634; am. 1992, ch. 106, § 7, p. 327; am. 1994, ch. 344, § 7, p. 1080; am. 1997, ch. 86, § 5, p. 205.]

63-2440. Exemptions from international fuel tax agreement license and reports and temporary permits. — (1) In lieu of obtaining an IFTA license, any person operating a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight, propelled by special fuels in this state, shall secure a temporary permit under section 49-432, Idaho Code, authorizing the operation of such vehicle in the state. The temporary permit shall be obtained through the Idaho transportation department. The fees shall be those provided by section 49-432, Idaho Code, and the revenues shall be distributed as provided by section 40-701, Idaho Code.

(2) A motor vehicle owned or operated by another state of the United States or an agency or political subdivision thereof shall be exempt from the requirements of sections 63-2438 and 63-2439, Idaho Code, if the state where the vehicle is owned grants a substantially similar exemption to vehicles owned by the state of Idaho, its agencies or political subdivisions.

(3) Recreational vehicles, as defined in section 63-2401, Idaho Code, and buses used exclusively for personal pleasure by an individual shall be exempt from the requirements of sections 63-2438 and 63-2439, Idaho Code. A recreational vehicle used in connection with any business or institutional endeavor shall not qualify for the exemption under this subsection. [I.C., § 63-2440, as added by 1983, ch. 158, § 4, p. 436; am. 1984, ch. 87, § 10, p. 169; am. 1985, ch. 242, § 2, p. 570; am. 1985, ch. 253, § 11, p. 586; am. 1988, ch. 146, § 1, p. 266; am. 1988, ch. 265, § 579, p. 549; am. 1992, ch. 106, § 8, p. 327; am. 1994, ch. 344, § 8, p. 1080; am. 1995, ch. 132, § 11, p. 565; am. 1997, ch. 86, § 6, p. 205; am. 2002, ch. 30, § 7, p. 37.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1988, ch. 146 provided that the act should take effect on and after January 1, 1989.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Section 9 of S.L. 1992, ch. 106 provided that the act would be in full force and effect on and after January 1, 1993.

63-2441. Penalties. — It shall be unlawful for any person to consume any special fuels in the propulsion of a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight on the highways of this state except as provided in section 63-2438, Idaho Code, unless such person is exempt from such requirement under section 63-2440, Idaho Code, or other provision of state or federal law or, in the case of vehicles using gaseous fuel, has complied with section 63-2424, Idaho Code. Such unlawful operation or the display of any fictitious or counterfeit IFTA cab card or decal or any fictitious or counterfeit temporary permit or display of an IFTA cab card or decal issued to a person other than the owner or operator or lessee of the vehicle on which it is displayed shall be a misdemeanor and any person convicted thereof may be punished in the manner provided by law. [I.C., § 63-2441, as added by 1984, ch. 87, § 11, p. 169; am. 1988, ch. 146, § 2, p. 266; am. 1988, ch. 265, § 580, p. 549; am. 1997, ch. 86, § 7, p. 205; am. 2002, ch. 30, § 8, p. 37.]

STATUTORY NOTES

Amendments. — This section was amended by two 1988 acts, ch. 146, § 2, effective January 1, 1989 and ch. 265, § 580, effective January 1, 1989, which appear to be compatible and have been compiled together.

The 1988 amendment, by ch. 146, in the first sentence substituted “twenty-six” for “sixteen” and “(26,000)” for “(16,000)”.

The 1988 amendment, by ch. 265, at the

end of the last sentence substituted “by law” for “in section 49-147, Idaho Code”.

Effective Dates. — Section 3 of S.L. 1988, ch. 146 provided that the act should take effect on and after January 1, 1989.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

63-2442. Exchange of information agreements. — For the purpose of administering the provisions of this chapter, the commission and the Idaho transportation department may enter into such written agreements for the exchange of information or delegation of authority or both as the commission and the department may find necessary to properly implement the letter and intent of the provisions of this chapter. [I.C., § 63-2442, as added by 1984, ch. 87, § 12, p. 169.]

63-2442A. International fuel tax agreement and other agreements between jurisdictions. — (1) The commission may enter into cooperative agreements with other jurisdictions for exchange of information and auditing of distributors, dealers and users of motor fuels. The commission shall participate in the international fuel tax agreement as required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, including subsequent amendments to that agreement.

(2) Any person operating a motor vehicle over twenty-six thousand (26,000) pounds maximum gross weight which is (a) based in this state and (b) operated in this state and in any other jurisdiction which is a member of the international fuels tax agreement shall report and pay all fuel use taxes due to any IFTA member jurisdiction, together with any other charges due to any such jurisdiction which are reportable on the IFTA report, in the manner required by IFTA. If the provisions set forth in the international fuel tax agreement are in conflict with any provision of this chapter, the agreement provisions shall prevail. An agreement, arrangement, declaration or amendment thereto is not effective until stated, in writing, and filed with the commission.

(3) An agreement may provide for determining the base jurisdiction for users, users records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes, penalties or interest to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(4) The commission may, as required by the terms of an agreement, forward to officers of another jurisdiction any information in the commission's possession relative to the manufacture, receipts, sale, use, transportation, or shipment of motor fuels by any person. The commission may

disclose to officers of another jurisdiction, the location of officers, motor vehicles, and other real and personal property of users of motor fuels.

(5) An agreement may provide for each jurisdiction to audit the records of persons based in the jurisdiction, to determine if the motor fuels taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction, to each jurisdiction in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuels in Idaho, the commission may serve the audit findings received from another jurisdiction, in the form of an assessment, on the person as though an audit was conducted by the commission.

(6) The commission may enter into additional cooperative agreements with other jurisdictions for mutual enforcement of taxes on gasoline and special fuels not subject to collection pursuant to the international fuel tax agreement. Such agreements may provide for collection and enforcement of the motor fuels taxes of all signatory jurisdictions pursuant to the law, rules, and regulations of the jurisdiction in which a person liable for such taxes maintains his principal place of business. An agreement may provide for any or all of the following: determining the base jurisdiction of persons liable for taxes, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, determining if bonding is required, specifying reporting requirements and periods including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuels taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.

(7) Any agreement entered into pursuant to this section does not preclude the commission from auditing the records of any person covered by the provisions of this chapter.

(8) The legal remedies for any person served with an order or assessment under this section are as prescribed in this chapter.

(9) If the commission enters into any agreement under the authority of this section, and the provisions set forth in the agreement are in conflict with any rules promulgated by the commission, the agreement provisions prevail. [I.C., § 63-2442A, as added by 1986, ch. 315, § 2, p. 777; am. 1994, ch. 344, § 9, p. 1080; am. 1997, ch. 86, § 8, p. 205; am. 2000, ch. 155, § 4, p. 392.]

STATUTORY NOTES

Federal References. — The intermodal surface transportation efficiency act of 1991, referred to in subsection (1), is codified throughout the United States Code, Titles 5, 16, 23, 26, 30, 40 Appendix, 42, 49, and 49 Appendix.

Effective Dates. — Section 9 of S.L. 1998, ch. 86 provided that the act should be in full force and effect on and after January 1, 1998.

63-2443. Violations and penalties. — (a) Acts forbidden: It shall be unlawful for any person to:

- (1) Refuse, or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;
 - (2) Wilfully fail to pay any tax due or any fee required by this chapter or any related penalties or interest;
 - (3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed by this chapter to make any false statement or conceal any material fact in any record, return, or affidavit provided for in this chapter;
 - (4) Conduct any activities requiring a license under this chapter without a license or after a license has been surrendered, canceled, or revoked;
 - (5) Fail to keep and maintain the books and records required by this chapter;
 - (6) Use dyed or untaxed fuel in a manner prohibited in this chapter.
- (b) It shall be unlawful for any retail dealer in motor fuel who is not a licensed distributor or for any person in the state of Idaho other than a licensed distributor to purchase, receive or accept any motor fuel upon which tax imposed by this chapter has not been paid.
- (c) It shall be unlawful for any person, including a licensed distributor, to sell or transfer any fuel upon which tax required by this chapter has not been paid to any person unless such sale or transfer is authorized by this chapter.
- (d) Penalties and remedies: Any person violating any provision of this section is guilty of a misdemeanor, unless the act is by any other law of this state declared to be a felony, and upon conviction is punishable by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (e) Penalties are cumulative: The fine and imprisonment provided for in this section shall be in addition to any other penalty imposed by any other provision of this chapter. [I.C., § 63-2443, as added by 1984, ch. 87, § 13, p. 169; am. 1995, ch. 348, § 6, p. 1142; am. 2002, ch. 174, § 12, p. 508.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1995, ch. 348 provided that this act shall be in full force and effect on and after January 1, 1996.

Section 14 of S.L. 2002, ch. 174 declared an emergency retroactively to July 1, 1996. Approved March 21, 2002.

63-2444. Effect of tribal agreements. [Effective December 1, 2007.] — Taxes imposed by this chapter shall not apply to motor fuel that is the subject of an agreement authorized by section 67-4002, Idaho Code, to the extent provided by the agreement, but only if the agreement is signed by the governor and appropriate representative of a tribe before December 1, 2007. [I.C., § 63-2444, as added by 2007, ch. 288, § 5, p. 817.]

STATUTORY NOTES

Compiler's Notes. — Section 6 of S.L. 2007, ch. 288 provided "SEVERABILITY. The provisions of this act are hereby declared to be

severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates. — Section 7 of S.L. 2007, ch. 288 provided that the act should take effect on December 1, 2007.

CHAPTER 25

CIGARETTE AND TOBACCO PRODUCTS TAXES

SECTION.

- 63-2501. Purpose.
- 63-2502. Definitions.
- 63-2503. Permits.
- 63-2504. Qualifications of wholesalers.
- 63-2505. Transportation of cigarettes.
- 63-2506. Imposition of tax.
- 63-2507. Stamps to be printed — Affixed to individual packages.
- 63-2508. Stamps to be affixed by person first receiving cigarettes in state.
- 63-2509. Compensation for affixing stamps.
- 63-2510. Payment of tax — Returns — Accounting for stamps.
- 63-2510A. Bonding.
- 63-2511. Records to be kept — Inspection.
- 63-2512. Penalties.
- 63-2513. Contraband articles.
- 63-2514. Search and seizure.
- 63-2515. Compromise and confiscation.
- 63-2516. Collection and enforcement — Actions against state of Idaho.
- 63-2517. Jurisdiction over nonresidents.
- 63-2518. [Repealed.]
- 63-2519. Civil action — Injunction.
- 63-2520. Distribution of moneys collected.
- 63-2521. Refunds — Limitations — Interest.
- 63-2522. Imposition and rate of tax.
- 63-2523. Prohibitions.
- 63-2524. [Repealed.]
- 63-2525. Criminal penalties.
- 63-2526. Administrative sanctions.
- 63-2527. General provisions.

SECTION.

- 63-2528. Definitions.
- 63-2529. Applicability.
- 63-2530. [Reserved.]
- 63-2531. [Repealed.]
- 63-2532 — 63-2550. [Reserved.]
- 63-2551. Tobacco products tax — Definitions.
- 63-2552. Tax imposed — Rate.
- 63-2552A. Additional tax imposed — Rate.
- 63-2553. Legislative intent.
- 63-2554. Permit required.
- 63-2555. Books and records to be preserved — Entry and inspection by commission.
- 63-2556. Preservation of invoices of sales to other than ultimate consumer.
- 63-2557. Invoices of purchases to be procured by retailer, subjobber — Preservation — Inspection.
- 63-2558. Records of shipments, deliveries from public warehouse of first destination — Preservation — Inspection.
- 63-2559. When credit may be obtained for tax paid.
- 63-2560. Tax payable monthly — Returns — Other than monthly returns — Procedure.
- 63-2561. Title of act.
- 63-2562. Additions and penalties.
- 63-2563. Collection and enforcement.
- 63-2564. Distribution of tax revenues.
- 63-2565. Refunds, limitations, interest.

63-2501. Purpose. — It is the intent and purpose of this act to levy a tax on all cigarettes sold, used, consumed, handled or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. [1974, ch. 211, § 1, p. 1548.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-2501 — 63-2521, which comprised 1945, ch. 205, §§ 1-21, p. 381; am. 1947, ch. 121, §§ 1, 2, p. 282; am. 1947, ch. 146, § 1, p. 349; am. 1947, ch. 169, §§ 1, 2, p. 427; am. 1955, ch. 70, §§ 1, 2, p. 137; am. 1955, ch. 74, §§ 1, 2, p. 144; am. 1959, ch. 171, § 1, p. 391; am. 1961, ch. 43, § 2, p. 66; am. 1963, ch. 344, § 1, p. 983; am. 1972, ch. 150, § 2, p. 324; am. 1972, ch. 275, § 1, p. 666 regarding taxes on cigarettes, were repealed by S.L. 1974, ch. 211, § 22 and

the present law substituted therefor.

Former §§ 63-2520 and 63-2521 which comprised S.L. 1945, ch. 205, §§ 20 and 21, as added by 1947, ch. 121, §§ 3 and 4 were previously repealed by S.L. 1950 (E.S.), ch. 11, § 3, p. 22.

Compiler’s Notes. — The words “this act” refer to S.L. 1974, ch. 211 which is compiled as §§ 63-2501, 63-2502, 63-2504 to 63-2509, 63-2511 to 63-2517, and 63-2520.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Sales by Indian on Reservation.

Imposition of sales tax by the state on cigarettes sold by an Indian on reservation lands was constitutionally improper.

Mahoney v. State Tax Comm'n, 96 Idaho 59, 524 P.2d 187 (1973), cert. denied, 419 U.S. 1089, 95 S. Ct. 679, 42 L. Ed. 2d 681 (1974).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 28-30.

63-2502. Definitions. — For the purpose of this act, unless otherwise required by the context:

(a) The word "wholesaler" means and includes every person who purchases, sells or distributes cigarettes to other wholesalers or to retailers for the purpose of resale.

(b) The word "retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale, or distributes cigarettes at retail, irrespective of quantity or amount, or the number of sales.

(c) The phrase "wholesale sale" means a sale of cigarettes by a wholesaler to a retailer.

(d) The word "cigarette" shall be taken in the ordinary context of that word and shall be any roll for smoking, made wholly or in part of tobacco, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco.

(e) The phrase "package of cigarettes" means the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made. A package shall contain no less than twenty (20) cigarettes and be packaged in increments of five (5). [1974, ch. 211, § 2, p. 1548; am. 1984, ch. 228, § 1, p. 547.]

STATUTORY NOTES

Prior Laws. — Former § 63-2502 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — For the words "this act" see Compiler's Notes, § 63-2501.

63-2503. Permits. — (1) It shall be unlawful for a person to act as a wholesaler of cigarettes without a permit. The permit shall be obtained by application to the tax commission upon a form furnished by it, accompanied by a fee of fifty dollars (\$50.00). The wholesaler permit shall be nonassignable and shall continue in force until surrendered or canceled.

(2) It shall be unlawful for any retailer to purchase, sell, offer for sale, distribute, store or possess any cigarettes without first applying for and receiving a seller's permit under section 63-3620, Idaho Code.

(3) A permit shall be held only by persons actively engaged in making wholesale sales of cigarettes subject to tax under this chapter. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation.

(4) Whenever any person fails to comply with any provision of this chapter relating to the purchase, sale or offering for sale or distribution of cigarettes or any rules of the state tax commission relating to the cigarette tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any permit held by the person or may deny a new permit to such person.

(5) The state tax commission may revoke the permit of a person not actively engaged in activities requiring a permit under this section.

(6) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(7) A permit, held by a person who for a period of twelve (12) consecutive months reports no cigarette tax due under this chapter, shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the permit was issued.

(8) A person who engaged in activities requiring a permit under this section without a permit or after a permit has been revoked or suspended, and any person who is a responsible person, as defined in section 63-3627, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-2516, Idaho Code. [I.C., § 63-2503, as added by 1986, ch. 193, § 2, p. 489; am. 2006, ch. 60, § 2, p. 186.]

STATUTORY NOTES

Prior Laws. — Former § 63-2503 was repealed. See Prior Laws, § 63-2501.

Another former § 63-2503, which comprised 1974, ch. 211, § 3, p. 1548, was repealed by S.L. 1986, ch. 193, § 1.

Amendments. — The 2006 amendment, by ch. 60, redesignated former subsections (a) and (b) as (1) and (2) and added subsections (3) to (8).

63-2504. Qualifications of wholesalers. — No wholesaler may be issued a permit or otherwise engage in and carry on business as a wholesaler of cigarettes until he first shall qualify under the rules promulgated by the state tax commission with reference to financial ability. Such restriction shall not apply to any wholesaler lawfully in business on the date this act is passed and approved. In addition no wholesaler's permit shall be issued unless:

- (1) in the case of a natural person, he be an Idaho resident, or
- (2) in case of a corporation, it is an Idaho corporation or a foreign corporation holding a certificate of authority issued by the secretary of state and maintaining a registered office and registered agent pursuant to the Idaho business corporation act, chapter 1, title 30, Idaho Code. [1974, ch. 211, § 4, p. 1548; am. 1986, ch. 193, § 3, p. 489; am. 1998, ch. 43, § 1, p. 188.]

STATUTORY NOTES

Prior Laws. — Former § 63-2504 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — The language "on the date this act is passed and approved" in

the introductory paragraph refers to April 3, 1974, the date of approval of S.L. 1974, Chapter 211.

63-2505. Transportation of cigarettes. — (1) It shall be unlawful for any person to transport into, export from or receive in this state or carry or move from place to place within this state, except as provided in this section, any cigarettes which do not have affixed thereto Idaho stamps.

(2) Any wholesaler engaged in interstate business, who shall furnish surety bond in a sum satisfactory to the state tax commission, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every wholesaler, at the time of shipping or delivering cigarettes, shall make a duplicate invoice, showing complete details of the sale, and shall retain the duplicate for inspection by the state tax commission or its agent.

(3) Except as provided in subsection (4) of this section, every person who shall transport cigarettes not stamped as required in this chapter upon the public highways, waterways, airways, roads or streets of this state shall have in his actual possession invoices or delivery tickets for such cigarettes which shall show:

- (a) The true name and the complete and exact address of the consignor or seller; and
- (b) The true name and complete and exact address of the consignee or purchaser; and
- (c) The quantity and brands of the cigarettes transported; and
- (d) Either:
 - (i) The true name and complete and exact address of the wholesaler licensed under this chapter who has or shall assume payment of taxes under this chapter; or
 - (ii) The true name and complete and exact address of the person authorized to receive unstamped cigarettes by the law of the state or foreign country to which the cigarettes are destined.

(4) Any common or contract carrier, as defined in 18 U.S.C. section 2341, who transports cigarettes under a proper bill of lading or freight bill which states the quantity, source and destination of such cigarettes and who is without notice to itself or to any of its agents or employees that said cigarettes are not stamped as required in this chapter shall be deemed to have complied with this section. [1974, ch. 211, § 5, p. 1548; am. 1995, ch. 43, § 1, p. 64.]

STATUTORY NOTES

Prior Laws. — Former § 63-2505 was repealed. See Prior Laws, § 63-2501.

63-2506. Imposition of tax. — (1) On and after July 1, 2005, a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes is hereby imposed at the rate of fifty-seven cents (57¢) per package of twenty (20) cigarettes, which tax shall be paid by the wholesaler, and collected by the state tax commission. 5.1746¢ of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system. 5.1746¢ of the tax collected per package of twenty (20) cigarettes shall be subject to appropriation to the department of juvenile corrections for distribution to the counties to be utilized for county juvenile probation services.

(2) Appropriated funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(3) The remaining moneys collected and those moneys not appropriated under the provisions of this section shall be distributed as specified in section 63-2520, Idaho Code. [1974, ch. 211, § 6, p. 1548; am. 1987, ch. 254, § 1, p. 517; am. 1994, ch. 447, § 2, p. 1431; am. 1995, ch. 160, § 1, p. 637; am. 1995, ch. 368, § 2, p. 1281; am. 1997, ch. 268, § 4, p. 769; am. 2003, ch. 362, § 1, p. 965; am. 2005, ch. 404, § 1, p. 1377.]

STATUTORY NOTES

Cross References. — Department of juvenile corrections, § 20-503.

Public school income fund, § 33-903.

Prior Laws. — Former § 63-2506 was repealed. See Prior Laws, § 63-2501.

This section was purportedly repealed by S.L. 1995, ch. 368, § 4, effective March 28, 1997, and a new § 63-2506 was enacted by § 5, effective March 28, 1997. Section 9 of S.L. 1995, ch. 368 provided that §§ 4, 5, and 6 of said act would be effective March 28, 1997. However, § 2 of S.L. 1997, ch. 268 repealed §§ 4, 5, and 9 of S.L. 1995, ch. 368 effective March 20, 1997, so that the repeal and enactment provided for in S.L. 1995, ch. 361, § 4 never took effect.

Amendments. — This section was amended by two 1995 acts — ch. 160, § 1, effective March 16, 1995, and ch. 368, § 2, effective March 28, 1995 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 160, § 1, in the second sentence substituted “to facilitate and provide” for “for”.

The 1995 amendment, by ch. 368, § 2, substituted “package” for both occurrences of “pack”, in the second sentence substituted “Five cents (5¢)” for “Ten cents (10¢)”, and added the present third sentence.

Legislative Intent. — Sections 1 and 7 of S.L. 1995, ch. 368 read: “SECTION 1. LEGISLATIVE INTENT. The Legislature finds that under the restructuring of the juvenile

corrections system in the State of Idaho the counties of the state are charged with the supervision of juvenile offenders throughout their involvement in the juvenile corrections system. Increasing demands placed upon county juvenile probation services may require increases in probationary staff and the establishment or expansion of treatment programs. The primary purpose of this legislation is to provide a source of funding to assist the counties in meeting start-up costs for expanded juvenile probation services and associated programs made necessary by this shift of responsibilities. It is the further intent of the Legislature that each county submit an annual written report to the Department of Juvenile Corrections of the manner in which funds received have been spent.

“It is the further intent of the Legislature that the division of funds established in this legislation be reevaluated to determine whether the distribution of resources between substance abuse programs in the public school system and juvenile justice probationary services and treatment programs for juvenile offenders effectively addresses the needs of our youth and the community.”

SECTION 7. “It is the intent of this Legislature that the funding created by this act is compatible with legislative intent expressed in Sections 63-2506 and 63-2552A, Idaho Code, and that the funding created by this act shall be reexamined in one year for the purposes of determining whether the funding so

created remains justifiable under Sections 63-2506 and 63-2552A, Idaho Code.”

Effective Dates. — Section 8 of S.L. 1995, ch. 368 declared an emergency and provided that §§ 1, 2, 3 and 7 should be in effect on March 28, 1995. Approved March 28, 1995.

Section 9 of S.L. 1995, ch. 368 provided that §§ 4, 5 and 6 of the act should be in effect two years from the effective date of the act — March 28, 1997.

Section 6 of S.L. 1997, ch. 268 declared an emergency. Approved March 20, 1997.

63-2507. Stamps to be printed — Affixed to individual packages.

— The state tax commission is hereby authorized and required to design and have printed Idaho cigarette stamps which are to be affixed to each individual package of cigarettes, which stamps shall be in the amount of the tax imposed by section 63-2506, Idaho Code. Except as otherwise prescribed by the state tax commission, each stamp shall be affixed in such a manner that it cannot be removed without being mutilated or destroyed. Stamps may be obtained only from the state tax commission, or its authorized agent, and only by a holder of a valid and current wholesaler permit. [1974, ch. 211, § 7, p. 1548; am. 1986, ch. 193, § 4, p. 489; am. 1995, ch. 43, § 2, p. 64.]

STATUTORY NOTES

Prior Laws. — Former § 63-2507 was repealed. See Prior Laws, § 63-2501.

63-2508. Stamps to be affixed by person first receiving cigarettes in state. — No cigarettes may be purchased, sold, distributed, stored or held on hand or in possession of any person without Idaho stamps having been affixed thereto, within a reasonable time after receipt thereof.

No person may import cigarettes, nor hold or have in possession unstamped cigarettes, unless he shall have qualified under this act as a wholesaler and obtained a permit, as provided for in section 63-2503, Idaho Code. [1974, ch. 211, § 8, p. 1548; am. 1986, ch. 193, § 5, p. 489.]

STATUTORY NOTES

Prior Laws. — Former § 63-2508 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — For the words “this act” see Compiler's Notes, § 63-2501.

63-2509. Compensation for affixing stamps. — On and after July 1, 2005, wholesalers shall be allowed as compensation for affixing stamps, three and three-tenths percent (3.3%) of the face value of the stamps purchased by them. [1974, ch. 211, § 9, p. 1548; am. 2003, ch. 362, § 2, p. 965; am. 2005, ch. 404, § 2, p. 1377.]

STATUTORY NOTES

Prior Laws. — Former § 63-2509 was repealed. See Prior Laws, § 63-2501.

63-2510. Payment of tax — Returns — Accounting for stamps. —

(1) The cigarette taxes imposed in section 63-2506, Idaho Code, are due from the person required under section 63-2508, Idaho Code, to affix stamps,

and are payable to the state tax commission monthly, together with the return required in this section.

(2) Every person owing cigarette taxes and every wholesaler shall file a return with the state tax commission in such form as the commission shall prescribe. The return shall report all taxes due regarding cigarettes received during the month or other reporting period, approved by the state tax commission, to which the return relates. The return shall contain such other information as the state tax commission shall require, and shall be signed by the person required to file the return or by such person's duly authorized agent. The return shall be filed on or before the twentieth day of the month following the end of the taxable period to which the return relates.

(3) The amount allowed as compensation for affixing stamps under section 63-2509, Idaho Code, shall be separately stated on the return as a credit against taxes due on the return.

(4) In addition to reporting the tax due as provided in this section, the return shall provide an accounting of all cigarette stamps acquired, held, and affixed by the wholesaler. The return shall include:

- (a) The number of stamps which were held at the beginning of the reporting period and were not affixed to packages;
- (b) The number of stamps acquired during the reporting period;
- (c) The number of stamps affixed to packages during the reporting period;
- (d) The number of unaffixed stamps held at the end of the reporting period; and
- (e) The number, if any, of stamps lost or destroyed. If stamps are lost or destroyed, a statement describing the circumstances giving rise to the loss or destruction shall accompany the return.

(5) In the event that any stamps obtained by a wholesaler are lost, destroyed, or otherwise unaccounted for, the wholesaler shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed, unless the wholesaler can establish, by clear and convincing evidence, that a specific number of stamps were actually destroyed or mutilated in such a manner as to render them unusable.

(6) In the event that a wholesaler or any other person in possession of unused cigarette stamps shall cease doing business as a wholesaler of cigarettes, such wholesaler or other person shall return all unused stamps to the state tax commission or shall be liable for an amount of tax equal to the tax on the number of cigarettes to which such stamps would have been affixed.

(7) A wholesaler may claim a credit against taxes due on the tax return for taxes previously paid on cigarettes, which after stamps are affixed, become unmarketable and are returned to the manufacturer. When such return is verified in such manner as the state tax commission may, by rule provide, the credit applies to the tax return for the month in which the verification occurs; except that, any amount of credit exceeding the tax due on the tax return may be carried forward to the succeeding tax return, in chronological order until exhausted.

(8) Taxes paid on cigarettes sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a

subsequent payment of the tax on cigarettes or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected. [I.C., § 63-2510, as added by 1988, ch. 224, § 2, p. 430; am. 1991, ch. 2, § 1, p. 13; am. 1994, ch. 43, § 1, p. 71; am. 2000, ch. 163, § 2, p. 412.]

STATUTORY NOTES

Prior Laws. — Former § 63-2510 was repealed. See Prior Laws, § 63-2501.

Another former § 63-2510, which comprised 1974, ch. 211, § 10, p. 1548, was repealed by S.L. 1988, ch. 224, § 1, effective July 1, 1989.

Compiler's Notes. — Section 6 of S.L. 1988, ch. 224 read: "Wholesalers required to file returns and pay taxes, pursuant to section 63-2510, Idaho Code, shall not be required to

report tax in regard to any stamps affixed to packages after the effective date of this act [January 1, 1989], if such stamps were purchased from the commission before the effective date of this act."

Effective Dates. — Section 3 of S.L. 2000, ch. 163 declared an emergency retroactively to January 1, 2000 and approved April 3, 2000.

63-2510A. Bonding. — (1) At the time an application for a wholesaler's license or permit, under section 63-2503, Idaho Code, is submitted to the state tax commission, the applicant shall file a bond, in such form as the commission may determine, conditioned upon faithful performance of all of the requirements of this chapter. The total amount of the bond shall be fixed by the commission and shall be equivalent to, at least, twice the estimated average tax liability for the reporting period for which the applicant will be required to file a return, under section 63-2510, Idaho Code. The bond required shall, in no case, be less than one thousand dollars (\$1,000). The total amount required to be secured by the bond may be increased or reduced by the commission at any time. Any bond given in conjunction with the provisions of this section shall be a continuing instrument, and shall cover the period during which the license or permit in connection with which the bond is given is in effect, unless the surety on the bond is released or discharged by the commission. Any surety on any bond furnished by a wholesaler shall be discharged only by the commission. Any surety on any bond furnished by a wholesaler shall be discharged and released by the commission from, any and all, liability to the state, accruing on the bond after the expiration of thirty (30) days from the date upon which the surety shall have lodged with the commission a written request to be released and discharged. The request shall not operate to relieve, release, or discharge the surety from any liability accrued, or which will accrue, before the expiration of the thirty (30) day period. The commission shall promptly, upon receipt of the notice of the request, notify the wholesaler and require him to furnish a new bond. Unless the wholesaler files a new bond with the commission in the amount provided in this section before the expiration of the thirty (30) day period, the commission shall immediately cancel the wholesaler's license or permit.

(2) In the event that any taxes due under the provisions of this chapter are not paid by a wholesaler, and the unpaid taxes are assessed by the commission, and after all avenues for appeal of the assessment have been

exhausted, the commission may apply the unpaid tax liability against the bond required in this section.

(3) A wholesaler may petition for release from the bond requirement after having filed timely and fully paid cigarette tax returns, as provided in section 63-2510, Idaho Code, for a period of not less than twelve (12) months. Upon such petition from the wholesaler, the commission will review the cigarette tax return filing and payment record of the wholesaler and, if determined necessary, within sixty (60) days examine the books and records of the wholesaler. The commission will, no later than ninety (90) days from the date of receipt of the petition, advise the wholesaler in writing of its determination and the reasons therefor. If the wholesaler wishes to seek a redetermination of the commission's decision, a petition for redetermination may be filed as provided in section 63-3045, Idaho Code.

(4) If at any time after release of a bond requirement the wholesaler becomes delinquent for any period in the filing of tax returns or the payment of the tax as required in section 63-2510, Idaho Code, the commission may make immediate demand that the return be filed or the payment be tendered and that a bond be filed as set forth in subsection (1) of this section. Any wholesaler against whom such demand is made may petition for a redetermination as provided in section 63-3045, Idaho Code, except that the petition must be filed no later than ten (10) days after service upon the person of notice thereof. If a petition for redetermination is not filed within the ten (10) day period, the determination shall become final and the commission shall issue a jeopardy assessment as provided in section 63-3630, Idaho Code, and thereafter may:

- (a) Seize all Idaho cigarette stamps in the possession of the wholesaler which are not applied to cigarettes;
- (b) File a lien of record upon the cigarettes held in inventory by the wholesaler or seize such cigarettes;
- (c) Revoke the wholesaler's cigarette permit as provided in section 63-2503, Idaho Code, except that no notice or hearing shall be required; and
- (d) Notify the manufacturers of the cigarettes held in inventory by the wholesaler of any or all actions so taken.

(5) A wholesaler who acquires all cigarettes with tax stamps affixed at the time of acquisition may petition the state tax commission for waiver of the bond required in subsection (1) of this section. Upon receipt of evidence establishing that the wholesaler is not required to pay cigarette taxes under this chapter because the wholesaler exclusively purchases cigarettes with stamps affixed by another wholesaler, the state tax commission may waive the requirement for a bond. Any such waiver is conditioned upon the wholesaler's continuing qualification for the waiver under this subsection. [I.C., § 63-2510A, as added by 1988, ch. 224, § 3, p. 430; am. 1990, ch. 41, § 1, p. 63; am. 1992, ch. 49, § 4, p. 151; am. 2006, ch. 60, § 6, p. 186.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 60, substituted "63-2503" for "63-2518" in subsection (4)(c).

63-2511. Records to be kept — Inspection. — Each wholesaler of cigarettes shall keep and preserve for a period of four (4) years, records showing the purchase and sale of cigarettes, as well as separate invoices and records of stamps purchased. All records and stocks of cigarettes on hand shall be open to inspection by the state tax commission or authorized employees at all reasonable times. Additionally, the state tax commission may require reports to be submitted to it from time to time concerning the purchase and sale of cigarettes and stamps.

All retailers and vending machine operators shall permit the state tax commission or authorized employees to inspect all cigarettes on hand. [1974, ch. 211, § 11, p. 1548; am. 1986, ch. 193, § 6, p. 489.]

STATUTORY NOTES

Prior Laws. — Former § 63-2511 was repealed. See Prior Laws, § 63-2501.

63-2512. Penalties. — The penalties herein prescribed are not intended as exclusive, but are in addition and supplemental to any and all other existing remedies and procedures prescribed by law for the enforcement of the revenue laws of this state.

(a) Any person who shall forge or counterfeit an Idaho cigarette stamp shall be guilty of a felony and upon conviction thereof shall be punished in accordance with the provisions of the criminal code, and additionally shall be ineligible to have issued him or to hold any state license or permit to sell or vend goods or merchandise of any kind or type, or to be employed by or work in any manner for any person who sells cigarettes for a period of five (5) years thereafter.

(b) The possession, purchase or consumption by any person of more than ten (10) packages of cigarettes without Idaho cigarette stamps is prohibited. Any person who possesses, purchases or consumes more than ten (10) packages of cigarettes without Idaho cigarette stamps shall be subject to a civil penalty equal to three (3) times the amount of tax due for each full or partial package of unstamped cigarettes in excess of ten (10), but in no event shall the penalty be less than fifty dollars (\$50.00). Such penalty shall be assessed and collected, as provided in section 63-2516, Idaho Code.

The penalty imposed by this subsection shall apply to persons acquiring cigarettes from internet, catalog, telephone and facsimile retailers.

(c) All violations of the provisions of this chapter for which criminal penalties are not otherwise imposed shall be misdemeanors and punishable in accordance with the provisions of the criminal code.

(d) The provisions of this section shall be applicable to all proceedings pending before the state tax commission, the board of tax appeals, or the courts of this state on the effective date of this act. [1974, ch. 211, § 12, p. 1548; am. 1976, ch. 175, § 2, p. 637; am. 1986, ch. 193, § 7, p. 489; am. 1988, ch. 319, § 1, p. 977; am. 1990, ch. 17, § 1, p. 28; am. 2006, ch. 60, § 4, p. 186; am. 2006, ch. 196, § 1, p. 610.]

STATUTORY NOTES

Cross References. — Penalty for felony when not otherwise provided, § 18-112.

Prior Laws. — Former § 63-2512 was repealed. See Prior Laws, § 63-2501.

Amendments. — This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 60, deleted former subsection (c) which read: "Failure to possess a valid permit, as required by section 63-2503, Idaho Code, shall be punishable by the imposition of civil penalties at the rate of twenty-five dollars (\$25.00) per day, per violation, and such penalty shall be assessed and collected, as provided in section 63-2516, Idaho Code" and redesignated former subsections (d) and (e) as (c) and (d).

The 2006 amendment, by ch. 196, rewrote

subsection (b), which formerly read: "The possession by any person of more than ten (10) packages of cigarettes without Idaho cigarette stamps is a misdemeanor. Any person upon conviction shall be subject to a fine of five dollars (\$5.00) for each full or partial package of unstamped cigarettes in his possession in excess of ten (10), but the maximum punishment for each offense shall not exceed a fine of three hundred dollars (\$300) or imprisonment in the county jail not to exceed ninety (90) days or both" and added the second paragraph in subsection (b).

Compiler's Notes. — The language "on the effective date of this act" in subsection (d) refers to July 1, 1974, the effective date of S.L. 1974, Chapter 211.

63-2513. Contraband articles. — Any unstamped cigarettes held, owned, possessed or in control of any person for a period of time longer than necessary to affix Idaho stamps, and hereby declared to be contraband goods, except as authorized under subsection (b) of section 63-2512, Idaho Code, and may be seized by the state tax commission, or an employee of the state tax commission, or any peace officer, when directed by the state tax commission, without a warrant. Any vehicle, not a common carrier operating in interstate commerce, used in violating this act, shall likewise be subject to confiscation. Said cigarettes or vehicles seized shall be offered for sale. Fifteen (15) days' notice of the sale shall be given; net proceeds from the sale shall be deposited in the general fund. The state tax commission shall require the purchaser at the sale to affix the proper amount of tax stamps to cigarette packages. [1974, ch. 211, § 13, p. 1548; am. 1976, ch. 175, § 1, p. 637; am. 1991, ch. 2, § 2, p. 13.]

STATUTORY NOTES

Prior Laws. — Former § 63-2513 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — For the words "this act" see Compiler's Notes, § 63-2501.

63-2514. Search and seizure. — When the state tax commission has reason to believe that any cigarettes are being kept, sold, offered for sale or given away in violation of this act, an employee, delegate or deputy of the state tax commission, or any peace officer, may make affidavit of such fact, describing the place or thing to be searched, before a magistrate, or such official shall issue a search warrant directed to the sheriff, constable, police officer, or employee[,], delegate or deputy of the state tax commission commanding him to search any place or vehicle that may be designated in the affidavit and search warrant, and to seize any cigarettes so possessed as well as any article, machine or vehicle wherein the same are found, kept or stored as contraband and to arrest the person in control or possession thereof for violation of the provisions of section 63-2512, Idaho Code. [1974, ch. 211, § 14, p. 1548; am. 1990, ch. 17, § 2, p. 28.]

STATUTORY NOTES

Prior Laws. — Former § 63-2514 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — The bracketed comma near the middle of this section was

inserted by the compiler.

For the words "this act" see Compiler's Notes, § 63-2501.

63-2515. Compromise and confiscation. — When it is shown to the satisfaction of the state tax commission that there was no intention to violate any of the provisions of this act, the commission may return any property confiscated to the party and permit the party to affix the proper amount of stamps to any cigarettes, provided additionally the party pays all costs incurred and a penalty of twenty-five per cent (25%) of the amount of tax as well as interest on the total value of the stamps required to be purchased at one per cent (1%) for each month or portion thereof, from the date of the initial incident or occurrence of violations. [1974, ch. 211, § 15, p. 1548.]

STATUTORY NOTES

Prior Laws. — Former § 63-2515 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — For the words "this act" see Compiler's Notes, § 63-2501.

63-2516. Collection and enforcement — Actions against state of Idaho. — In addition to the enforcement and penalty provisions in this act otherwise provided, the deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045, 63-3045A, 63-3046, 63-3047, 63-3048 through 63-3065, 63-3068, 63-3071, 63-3073, 63-3075 and 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due, and said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this act, be described as cigarette tax liens and proceedings.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid as provided for payment of cigarette tax refunds. [1974, ch. 211, § 16, p. 1548; am. 1986, ch. 193, § 8, p. 489; am. 2007, ch. 10, § 7, p. 10.]

STATUTORY NOTES

Cross References. — Idaho income tax act, § 63-3001 et seq.

Prior Laws. — Former § 63-2516 was repealed. See Prior Laws, § 63-2501.

Amendments. — The 2007 amendment,

by ch. 10, deleted "63-3070" following "63-3068."

Compiler's Notes. — For the words "this act" see Compiler's Notes, § 63-2501.

63-2517. Jurisdiction over nonresidents. — A deficiency assessed and due and payable by a person not within the state may be prosecuted against such person by an action in any court in this state having jurisdiction of the subject matter, and the court shall have personal jurisdiction of such a person in any such action for taxes imposed and assessed under this act. Notice shall be given such person by personal service without the state or by publication. In the event such notice shall be by publication, notice shall also be mailed by registered or certified mail to such person at his last known address. [1974, ch. 211, § 17, p. 1548.]

STATUTORY NOTES

Prior Laws. — Former § 63-2517 was repealed. See Prior Laws, § 63-2501.

Compiler's Notes. — For the words "this act" see Compiler's Notes, § 63-2501.

63-2518. Revocation of permits. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1974, ch. 211, § 18, p. 1548; am. 2001, ch. 183, § 29, was repealed by S.L. 2006, ch. 60, § 3.

Prior Laws. — Another former § 63-2518 was repealed. See Prior Laws, § 63-2501.

63-2519. Civil action — Injunction. — If the state tax commission determines that any person is engaged in business as a wholesaler without holding a valid permit or license, it may proceed, by injunction or other legal process, to prevent the continuance of the business. An injunction, enjoining the continuance of the business by such person, may be granted without bond by any court or judge authorized by law to grant injunctions. [I.C., § 63-2519, as added by 1988, ch. 224, § 5, p. 430.]

STATUTORY NOTES

Prior Laws. — Former § 63-2519 was repealed. See Prior Laws, § 63-2501.

Another former § 63-2519, which comprised 1974, ch. 211, § 11, p. 1548, was re-

pealed by S.L. 1988, ch. 224, § 4.

Effective Dates. — Section 7 of S.L. 1988, ch. 224 provided that the act should take effect on and after July 1, 1989.

63-2520. Distribution of moneys collected. — Revenues received from the taxes imposed by this chapter, and any revenues received from licenses, permits, penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) On and after July 1, 2005, the balance remaining with the state treasurer after deducting the amount described in subsection (a) of this section shall be distributed as follows:

(1) 17.3% of such balance shall be distributed to the permanent building fund created by section 57-1108, Idaho Code.

(2) 0.4% of such balance shall be distributed to the central tumor [cancer] registry account. The amount of money so distributed to the central tumor [cancer] registry account shall not exceed the fiscal year's appropriation, and at such time as the appropriation has been distributed to the central tumor [cancer] registry account during any fiscal year, all such distributions in excess of the appropriation shall be made instead to the general fund of the state of Idaho.

(3) 1% of such balance shall be distributed to the cancer control account created by section 57-1702, Idaho Code. Revenues received in the cancer control account shall be paid over to the state treasurer by the state tax commission to be distributed as follows:

(i) Such amounts as are appropriated for purposes specified in section 57-1702, Idaho Code, shall be expended as appropriated;

(ii) Any balance remaining in the cancer control account on June 30 of any fiscal year after the amounts withdrawn by appropriation have been deducted, shall be reserved for transfer to the general fund on July 1 and the state controller shall order such transfer.

(4) An amount equal to the annual general fund appropriation for bond levy equalization, pursuant to section 33-906, Idaho Code, shall be annually distributed to the general fund.

(5) All remaining moneys shall be distributed as follows: For the fiscal year commencing July 1, 2005, and ending June 30, 2006, all moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code. For fiscal years on and after July 1, 2006, all moneys shall be distributed to the permanent building fund with the moneys to be used for the repair, remodel and restoration of the state capitol building and state facilities pertaining to the capitol restoration until such time as the capitol restoration is adequately funded as certified by the director of the department of administration. Thereafter all moneys shall be distributed to the economic recovery reserve fund created by section 67-3520, Idaho Code. [1974, ch. 211, § 20, p. 1548; am. 1975, ch. 57, § 1, p. 121; am. 1976, ch. 51, § 15, p. 152; am. 1978, ch. 182, § 1, p. 413; am. 1979, ch. 33, § 2, p. 48; am. 1980, ch. 1, § 1, p. 3; am. 1982, ch. 49, § 1, p. 74; am. 1984, ch. 146, § 1, p. 341; am. 1986, ch. 73, § 10, p. 201; am. 1987, ch. 254, § 2, p. 517; am. 1989, ch. 345, § 1, p. 872; am. 1994, ch. 45, § 2, p. 73; am. 1994, ch. 180, § 155, p. 420; am. 2000, ch. 60, § 2, p. 131; am. 2003, ch. 362, § 3, p. 965; am. 2005, ch. 404, § 3, p. 1377; am. 2006, ch. 311, § 11, p. 957.]

STATUTORY NOTES

Cross References. — Central cancer registry fund, § 57-1701 et seq.

State refund account, § 63-3067.

Prior Laws. — Former § 63-2520 was repealed. See Prior Laws, § 63-2501.

Amendments. — This section was amended by two 1994 acts — ch. 45, § 2,

effective July 1, 1994 and ch. 180, § 155, contingently effective January 2, 1995 — which do not appear to conflict and have been compiled together.

The 1994 amendment, by ch. 45, § 2, in the second sentence of paragraph (b)(3), substituted "the fiscal year's appropriation" for "one

hundred ten thousand dollars (\$110,00) per fiscal year” and substituted “the appropriation” for “one hundred ten thousand dollars (\$110,000)” in two instances.

The 1994 amendment, by ch. 180, § 155, substituted “state controller” for “state auditor” in paragraph (b)(4).

The 2006 amendment, by ch. 311, rewrote subsection (4), which formerly read: “21.25% of such balance shall be distributed to the general fund of the state of Idaho for the fiscal year commencing July 1, 2005 through June 30, 2006.”

Legislative Intent. — Section 1 of S.L. 2006, ch. 311 provided “SECTION 1. LEGISLATIVE FINDINGS AND INTENT. The Legislature hereby finds that:

“(1) Section 1, Article IX, of the Constitution of the state of Idaho provides that ‘it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’

“(2) In the case of *Idaho Schools for Equal Educational Opportunity v. Evans*, 123 Idaho 573 (1993), the Idaho Supreme Court held that the then existing State Board of Education rules for school facilities, textbooks and curriculum, and transportation systems were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case for trial to determine if the system of funding was providing such school facilities, textbooks and curriculum, and transportation systems called for in the rules.

“(3) In response to that action, the Legislature enacted Section 33-1612, Idaho Code, which defined thoroughness and included ‘a safe environment conducive to learning’ among the statutory definitions of thoroughness.

“(4) In a subsequent ruling in the same case, *Idaho Schools for Equal Educational Opportunity v. State*, 132 Idaho 559 (1999), the Idaho Supreme Court held that the statutory requirement of ‘a safe environment conducive to learning’ and the rules adopted pursuant to it were consistent with the thoroughness requirements of Section 1, Article IX, of the Constitution of the state of Idaho, and that such a safe environment was inherently part of a thorough system of public, free common schools required by Section 1, Article IX, of the Constitution of the state of Idaho. The Supreme Court remanded the case to the district court to determine whether the funding system was providing a safe environment conducive to learning.

“(5) On February 5, 2001, the Fourth Judicial District Court entered findings of fact and conclusions of law that the system of school funding then in existence was constitution-

ally deficient in its ability to repair or replace dangerous or unsafe conditions in school buildings.

“(6) On December 21, 2005, on appeal to the Supreme Court, the Idaho Supreme Court affirmed the district court’s February 5, 2001, decision and said:

“In sum, the evidence in the record clearly supports the district court’s 2001 Findings. We affirm the conclusion of the district court that the current funding system is simply not sufficient to carry out the Legislature’s duty under the constitution. While the Legislature has made laudable efforts to address the safety concerns of various school districts, the task is not yet complete. The appropriate remedy, however, must be fashioned by the Legislature and not this Court. Quite simply, Article IX of our constitution means what it says: ‘[I]t shall be the duty of the Legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.’ Thus, it is the duty of the State, and not this Court or the local school districts, to meet this constitutional mandate.

“(7) In response to the Supreme Court’s 2005 decision, and mindful that the Supreme Court has recognized the Legislature’s efforts, following the district court’s decision in 2001, to provide a system of funding that provides safe schools, it is the purpose of this Act to fulfill the Legislature’s responsibility under Section 1, Article IX, of the Constitution of the state of Idaho, by establishing an ongoing, state-funded system for funding repair or replacement of unsafe school facilities in a manner that fairly and equitably balances the state and local contributions. It requires funds to be dedicated to maintenance to arrest deterioration of schools before they become unsafe.

“(8) In proposing this Act, it is the intent of the Legislature to:

“(a) Amend the statutes addressing the School District Building Account to provide an ongoing means of providing funds from that account for the purpose of assisting school districts to fund repair or replacement of unsafe school facilities; and

“(b) Remove all artificial limits on the functioning of the bond levy equalization value index. The index measures a school district’s relative ability to pay, and provides a secure, ongoing revenue source for the bond levy equalization program, enabling each school district’s full share of state lottery funds to be used for school building maintenance and repairs; and

“(c) Establish an ongoing School Facilities Cooperative Funding Program to assist school districts to fund repair or replacement of unsafe school buildings when school districts are unable to fund necessary repair or replacement; and

“(d) Provide ongoing, fair and equitable state assistance to school districts under the School Facilities Cooperative Funding Program whereby the state initially funds the total cost of repair and replacement that school districts are unable to fund themselves. It creates the necessary taxing authority to pay the school district’s share of the cost of repair or replacement, and establishes a statutory formula to annually determine the school district’s fair and equitable share of the costs of repair or replacement that compares the school district’s bonds and/or plant facilities levy rates to the statewide average bond and/or facility levy rate; and

“(e) Require each school district to annually set aside an adequate amount of moneys for the exclusive purpose of school building

maintenance in order to arrest deterioration in school facilities that have lead to unsafe conditions and to provide a sliding scale of state match subsidies for this amount based upon the school district’s relative ability to pay.”

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 155 of S.L. 1994, ch. 180 became effective January 2, 1995.

63-2521. Refunds — Limitations — Interest. — (1) Where there has been an overpayment of any cigarette tax imposed by this chapter, the amount of such overpayment shall be credited against any taxes then due to the state tax commission from the taxpayer and any balance of such excess shall be refunded to the taxpayer.

(2) No such credit or refund of taxes, penalties or interest paid, shall be allowed or made after three (3) years from the time the return was filed, unless before the expiration of such period a claim therefor is filed by the taxpayer with the commission.

(3) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid.

(4) If the state tax commission denies a claim for refund in whole or in part, it shall provide notice of the denial and the claimant may petition the state tax commission for a redetermination of the denial in the manner provided in section 63-3045, Idaho Code. Appeal of a tax commission decision denying in whole or in part a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code. [I.C., § 63-2521, as added by 2001, ch. 52, § 2, p. 94.]

STATUTORY NOTES

Prior Laws. — Former section 63-2521, which comprised 1974, ch. 211, § 21, p. 1548, was repealed by S.L. 2001, ch. 52, § 1.

63-2522. Imposition and rate of tax. — Commencing March 1, 1987, and ending July 1, 1987, in addition to the tax imposed by section 63-2506, Idaho Code, there is hereby imposed a tax upon the purchase, storage, use, consumption, handling, distribution or wholesale sale of cigarettes at the rate of 89/200 of \$.01 for each cigarette, which tax shall be paid by the wholesaler and collected by the state tax commission.

The moneys collected under this section shall be deposited into the general account. [I.C., § 63-2522, as added by 1987, ch. 254, § 3, p. 517.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1987, ch. 254 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 3 of this act shall be in full force and effect on and after March 1, 1987.”

63-2523. Prohibitions. — It shall be unlawful for any person:

(1) To sell or distribute in this state; to acquire, hold, own, possess or transport, for sale or distribution in this state; or to bring into this state for sale or distribution in this state:

(a) Any cigarettes the package of which:

(i) Bears any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States including, but not limited to, labels stating “For Export Only,” “U.S. Tax-Exempt,” “For Use Outside U.S.” or similar wording; or

(ii) Does not comply with:

1. All requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States including, but not limited to, the precise warning labels specified in the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; and

2. All federal trademark and copyright laws;

(b) Any cigarettes imported into the United States in violation of section 5754 of the Internal Revenue Code as defined in section 63-3004, Idaho Code, or any other federal law, or implementing federal regulations;

(c) Any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(d) Any cigarettes for which there has not been submitted to the secretary of the U.S. department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal cigarette labeling and advertising act, 15 U.S.C. section 1335a;

(2) To alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) Any statement, label, stamp, sticker or notice described in subparagraph (1)(a)(i) of this section;

(b) Any health warning that is not specified in, or does not conform with the requirements of, the federal cigarette labeling and advertising act, 15 U.S.C. section 1333; or

(3) To affix any stamp required pursuant to chapter 25, title 63, Idaho Code, to the package of any cigarettes described in subsection (1) of this section or altered in violation of subsection (2) of this section. [I.C., § 63-2523, as added by 2000, ch. 351, § 1, p. 1178; am. 2001, ch. 40, § 1, p. 76.]

STATUTORY NOTES

Federal References. — Section 5754 of the Internal Revenue Code, referred to in subsection (1)(b), is codified as 26 U.S.C.S. § 5754.

Effective Dates. — Section 3 of S.L. 2001, ch. 40 declared an emergency retroactively to January 1, 2001 and approved March 8, 2001.

63-2524. Documentation. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-2524, as added by 2000, ch. 351, § 1, p. 1178, was repealed by S.L. 2001, ch. 40, § 2.

63-2525. Criminal penalties. — Any person that violates or fails to comply with any of the provisions of this chapter or rules promulgated pursuant thereto shall be punishable by a fine of not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. [I.C., § 63-2525, as added by 2000, ch. 351, § 1, p. 1178.]

63-2526. Administrative sanctions. — (1) The state tax commission may revoke or suspend the permit issued to any person pursuant to chapter 25, title 63, Idaho Code, in accordance with procedures set forth in the Idaho administrative procedure act. The state tax commission may, in addition to the suspension or revocation of such permit, assess a civil penalty to be paid by such permittee in an amount not to exceed the greater of five hundred percent (500%) of the retail value of the cigarettes involved or five thousand dollars (\$5,000), upon finding a violation of any of the provisions of this chapter by such permittee. Assessment of a civil penalty hereunder shall be made in the same manner as provided in section 63-2516, Idaho Code, for assessing a tax under this chapter.

(2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of the provisions of this chapter, shall be deemed contraband under section 63-2513, Idaho Code, and shall be subject to seizure and forfeiture as provided therein. Provided however, notwithstanding the provisions of section 63-2515, Idaho Code, all such cigarettes so seized and forfeited shall be destroyed and shall not be subject to resale. Such cigarettes shall be deemed contraband whether the violation of this chapter is knowing or otherwise. [I.C., § 63-2526, as added by 2000, ch. 351, § 1, p. 1178.]

STATUTORY NOTES

Cross References. — Idaho Administrative Procedure Act, Chapter 52, Title 63, Idaho Code.

63-2527. General provisions. — (1) It shall be the duty of the state tax commission to administer the provisions of this chapter.

(2) For the purpose of administering the provisions of this chapter, the state tax commission may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

(3) In addition to any other remedy provided by law, any person may bring an action for appropriate injunctive or other equitable relief for a violation of this chapter; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the court finds that the violation is flagrant, it may increase recovery to an amount not in excess of three (3) times the actual damages sustained by reason of the violation. [I.C., § 63-2527, as added by 2000, ch. 351, § 1, p. 1178.]

63-2528. Definitions. — The definitions set forth in section 63-2502, Idaho Code, shall apply to the provisions of this chapter. In addition, as used in this act:

(1) "Commission" means the Idaho state tax commission.

(2) "Importer" means any person in the United States to whom nontaxpaid cigarettes manufactured in a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States are shipped or consigned; any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse; and any person who smuggles or otherwise unlawfully brings cigarettes into the United States.

(3) "Manufacturer" means any person who manufactures cigarettes by any method of preparing, processing or manipulating tobacco, except for his own personal consumption or use.

(4) "Person" means an individual, partnership, corporation or any other business or legal entity. [I.C., § 63-2528, as added by 2000, ch. 351, § 1, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to §§ 63-2523 and 63-2525 to 63-2529.

63-2529. Applicability. — (1) This act does not apply to:

(a) Cigarettes imported or brought into the United States for personal use; or

(b) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. section 1555(b) and any implementing regulations. Provided however, that this chapter shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

(2) The penalties provided in this chapter are in addition to any other penalties imposed under other law. [I.C., § 63-2529, as added by 2000, ch. 351, § 1, p. 1178.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to §§ 63-2523 and 63-2525 to 63-2529.

63-2530. [Reserved.]**63-2531. Floor stocks tax. [Repealed.]**

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-2531, as added by 2003, ch. 362, § 4, p. 965, was repealed by S.L. 2003, ch. 362, § 7, effective July 1, 2005.

63-2532 — 63-2550. [Reserved.]**63-2551. Tobacco products tax — Definitions.** — As used in this act:

(1) "Tobacco products" shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug, cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing) and snuff, however prepared; and shall include any other articles or products made of tobacco or any substitute therefor, except cigarettes;

(2) "Manufacturer" means a person who manufactures and sells tobacco products;

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(4) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers;

(5) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers;

(6) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter, or for any other purposes whatsoever;

(7) "Wholesale sales price" means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction;

(8) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state;

(9) "Place of business" means any place where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine;

(10) "Retail outlet" means each place of business from which tobacco products are sold to consumers;

(11) "Commission" means the Idaho state tax commission. [1972, ch. 289, § 1, p. 725.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" in this section refer to S.L. 1972, ch. 289 compiled herein as §§ 63-2551, 63-2552, and 63-2553 to 63-2561.

63-2552. Tax imposed — Rate. — (1) From and after July 1, 1972, there is levied and there shall be collected a tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of thirty-five per cent (35%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, or fabricates tobacco products in this state for sale in this state, or (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

(2) A floor stocks tax is hereby imposed upon every distributor of tobacco products at the rate of thirty-five per cent (35%) of the wholesale sales price of each tobacco product in his possession or under his control on July 1, 1972.

Each distributor, within twenty (20) days after July 1, 1972, shall file a report with the commission, in such form as the commission may prescribe, showing the tobacco products on hand on July 1, 1972, and the amount of tax due thereon.

The tax imposed by this subdivision shall be due and payable within twenty (20) days after July 1, 1972, and thereafter shall bear interest at the rate of one per cent (1%) per month. [1972, ch. 289, § 2, p. 725; am. 1974, ch. 173, § 1, p. 1432.]

63-2552A. Additional tax imposed — Rate. — (1) In addition to the tax imposed in section 63-2552, Idaho Code, from and after July 1, 1994, there is levied and there shall be collected an additional tax upon the sale, use, consumption, handling, or distribution of all tobacco products in this state at the rate of five percent (5%) of the wholesale sales price of such tobacco products. Such tax shall be imposed at the time the distributor:

(a) Brings, or causes to be brought, into this state from without the state tobacco products for sale;

(b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(c) Ships or transports tobacco products to retailers in this state to be sold by those retailers.

(2) Each distributor, within twenty (20) days after July 1, 1994, shall file a report with the commission, in such form as the commission may

prescribe, showing the tobacco products on hand on July 1, 1994, and the amount of tax due thereon. The tax imposed in this subsection shall be due and payable within twenty (20) days after July 1, 1994, and thereafter shall bear interest at the rate of one percent (1%) per month.

(3) Fifty percent (50%) of the tax collected pursuant to this section shall be subject to appropriation to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system of which amount two hundred fifty thousand dollars (\$250,000) shall be remitted annually to the Idaho state police to increase toxicology lab capacity in the bureau of forensic services for drug testing of juveniles, and fifty percent (50%) shall be subject to appropriation to the department of juvenile corrections for distribution quarterly to the counties to be utilized for county juvenile probation services, based upon the percentage the population of the county bears to the population of the state as a whole. The moneys remitted to the Idaho state police shall be reviewed annually and any money excess to the operations needs of the laboratory for juvenile drug testing will be returned to the public school income fund for substance abuse programs in the public school system. The laboratory may utilize this increased toxicology capacity for adult drug testing to the extent that timely testing for juveniles is not adversely impacted. [I.C., § 63-2552A, as added by 1994, ch. 447, § 3, p. 1431; am. 1995, ch. 160, § 2, p. 651; am. 1995, ch. 368, § 3, p. 1281; am. 1996, ch. 261, § 4, p. 857; am. 1997, ch. 268, § 5, p. 769; am. 2000, ch. 469, § 131, p. 1450.]

STATUTORY NOTES

Cross References. — Department of Juvenile Corrections, § 20-503.

Public school income fund, § 33-903.

Prior Laws. — Former § 63-2552A, which comprised I.C., § 63-2552A, as added by 1994, ch. 447, § 3, p. 1431; am. 1995, ch. 160, § 2, p. 651; 1995, ch. 368, § 3, p. 1281; am. 1996, ch. 261, § 4, p. 857, was repealed by S.L. 1995, ch. 368, § 4, effective March 28, 1997.

Another former § 63-2552A, which comprised I.C., § 63-2552A, as added by 1994, ch. 447, § 3, p. 1431; am. 1995, ch. 160, § 2, p. 651; am. 1995, ch. 368, § 3, p. 1281; am. 1996, ch. 261, § 4, p. 857 was repealed by § 4 of S.L. 1995, ch. 368, and a new § 63-2552A was enacted by § 5 of 1995, ch. 261, both to become effective March 28, 1997 by § 9 of 1995, ch. 368. S.L. 1996, ch. 261, § 5 amended the section as enacted by § 6 of ch. 368 of 1995, effective March 28, 1997 as provided by 6 of S.L. 1996, ch. 261. However, effective March 20, 1997, § 2 of S.L. 1997, ch. 268 repealed §§ 4, 6, and 9 of S.L. 1995, ch. 368 and § 5 of S.L. 1996, ch. 261 and § of S.L. 1997, ch. 268, and § 3 amended § 6 of S.L. 1996, ch. 261 by deleting that portion of the section that provided that § 5 of S.L. 1996, ch. 261 would become effective on March 28, 1997.

Legislative Intent. — Section 4 of S.L. 1995, ch. 160 read: "It is legislative intent that because substance abuse programs in the public schools are threatened by reduction of federal funds that the funds appropriated in Section 3 of this act [an appropriation] shall be used to continue programs established under the federal drug-free schools and communities program. It is further legislative intent that the funds shall be distributed to the districts as follows: fifty percent (\$300,000) on the basis of student enrollment, and fifty percent (\$300,000) on the same basis as the chapter I federal funding formula which indicates low income districts."

Sections 1 and 7 of S.L. 1995, ch. 368 read: "SECTION 1. LEGISLATIVE INTENT. The Legislature finds that under the restructuring of the juvenile corrections system in the State of Idaho the counties of the state are charged with the supervision of juvenile offenders throughout their involvement in the juvenile corrections system. Increasing demands placed upon county juvenile probation services may require increases in probationary staff and the establishment or expansion of treatment programs. The primary purpose of this legislation is to provide a source of funding to assist the counties in meeting start-up costs for expanded juvenile probation

services and associated programs made necessary by this shift of responsibilities. It is the further intent of the Legislature that each county submit an annual written report to the Department of Juvenile Corrections of the manner in which funds received have been spent.

"It is the further intent of the Legislature that the division of funds established in this legislation be reevaluated to determine whether the distribution of resources between substance abuse programs in the public school system and juvenile justice probationary services and treatment programs for juvenile offenders effectively addresses the needs of our youth and the community."

SECTION 7. "It is the intent of this Legislature that the funding created by this act is compatible with legislative intent expressed in Sections 63-2506 and 63-2552A, Idaho Code, and that the funding created by this act shall be reexamined in one year for the pur-

poses of determining whether the funding so created remains justifiable under Sections 63-2506 and 63-2552A, Idaho Code."

Effective Dates. — Section 5 of S.L. 1995, ch. 160 declared an emergency. Approved March 16, 1995.

Section 8 of S.L. 1995, ch. 368 declared an emergency and provided that §§ 1, 2, 3 and 7 should be in effect on March 28, 1995. Approved March 28, 1995 and § 9 provided that §§ 4-6 should be in effect March 28, 1997.

Section 9 of S.L. 1995, ch. 368 provided that §§ 4, 5 and 6 of the act should be in effect two years from the effective date of the act — March 28, 1997.

Section 6 of S.L. 1996, ch. 261 provided that sections 1 through 4 of this act shall be in full force and effect on and after July 1, 1996. Section 5 of this act shall be in full force and effect on and after March 28, 1997.

Section 6 of S.L. 1997, ch. 268 declared an emergency. Approved March 20, 1997.

63-2553. Legislative intent. — It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in section 63-2551 [, Idaho Code]. It is the further intent and purpose of this chapter to impose the tax only once but nothing in this chapter shall be construed to exempt any person taxable under any other law or under any other tax imposed by the state of Idaho. [1972, ch. 289, § 3, p. 725.]

STATUTORY NOTES

Compiler's Notes. — The words "this chapter" as used in this section refer to Chapter 289 of S.L. 1972 compiled as §§ 63-2551, 63-2552, and 63-2553 to 63-2561.

63-2554. Permit required. — No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received from the commission a permit as provided in section 63-2503 or 63-2504, Idaho Code. [1972, ch. 289, § 4, p. 725; am. 1991, ch. 2, § 3, p. 13; am. 2007, ch. 19, § 1, p. 29.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 19, substituted "permit" for "certificate of registration" in the section heading and near the end of the section; and deleted "From and after July 1, 1972," from the beginning of the section.

63-2555. Books and records to be preserved — Entry and inspection by commission. — Every distributor shall keep at each registered place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco

products made, except sales to the ultimate consumer.

These records shall show the names and addresses of purchasers, the inventory of all tobacco products on hand on July 1, 1972, and other pertinent papers and documents relating to the purchase, sale or disposition of tobacco products.

When a registered distributor sells tobacco products exclusively to the ultimate consumer at the address given in the certificate, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that registered distributor. All books, records, and other papers and documents required by this section to be kept shall be preserved for a period of at least five (5) years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the commission, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours the commission, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the commission, or any of its agents or employees, is denied free access or is hindered or interfered with in making such examination, the registration certificate of the distributor at such premises shall be subject to revocation by the commission. [1972, ch. 289, § 5, p. 725.]

STATUTORY NOTES

Compiler's Notes. — The words “this chapter” as used in this section refer to Chapter 289 of S.L. 1972 compiled as §§ 63-2551, 63-2552, and 63-2553 to 63-2561.

63-2556. Preservation of invoices of sales to other than ultimate consumer. — Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. He shall preserve legible copies of all such invoices for five (5) years from the date of sale. [1972, ch. 289, § 6, p. 725.]

63-2557. Invoices of purchases to be procured by retailer, subjobber — Preservation — Inspection. — Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each such invoice for five (5) years from the date of purchase. Invoices shall be available for inspection by the commission or its authorized agents or employees at the retailer's or subjobber's place of business. [1972, ch. 289, § 7, p. 725.]

63-2558. Records of shipments, deliveries from public warehouse of first destination — Preservation — Inspection. — Records of all

deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the commission for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commission may require. These records shall be preserved for five (5) years from the date of delivery of the tobacco products. [1972, ch. 289, § 8, p. 725.]

63-2559. When credit may be obtained for tax paid. — (1) Where tobacco products upon which the tax imposed by this chapter has been reported and paid, are shipped or transported by the distributor to distributors or retailers outside the state, to be sold by those distributors or retailers, or are returned to the manufacturer by the distributor or destroyed by the distributor, credit of such tax may be made to the distributor in accordance with rules prescribed by the commission.

(2) Taxes paid on tobacco products sold on or after January 1, 2000, on accounts later found to be worthless and actually charged-off may be credited upon a subsequent payment of the tax on tobacco products or, if no such tax is due, refunded. If all or part of such an account is thereafter collected, the tax shall be paid based upon the proportion of the amount collected. [1972, ch. 289, § 9, p. 725; am. 2000, ch. 163, § 1, p. 412; am. 2007, ch. 19, § 2, p. 29.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 19, inserted “distributors or” preceding “retailers” twice in subsection (1).

ch. 163 declared an emergency retroactively to January 1, 2000 and approved April 3, 2000.

Effective Dates. — Section 3 of S.L. 2000,

63-2560. Tax payable monthly — Returns — Other than monthly returns — Procedure. — (1) The taxes imposed hereunder shall be due and payable in monthly installments and remittance therefor shall be made on or before the twentieth day of the month next succeeding the end of the monthly period in which tax accrued. The taxpayer, on or before said twentieth day of said month, shall make out a return, upon such forms and setting forth such information as the tax commission may require, showing the amount of the tax for which he is liable for the preceding monthly period, and shall sign and transmit the same to the commission, together with a remittance for such amount in the form required.

(2) The state tax commission may by rule provide returns for periods of time other than monthly periods. Returns for such reporting periods, together with payment of the required taxes, shall be due on or before the twentieth day of the month following the end of the period to which the return relates. [1972, ch. 289, § 10, p. 725; am. 1990, ch. 17, § 3, p. 28; am. 2007, ch. 19, § 3, p. 29.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 19, substituted “other than monthly returns” for “monthly estimate and quarterly

returns” in the section heading; rewrote the section, adding subsection (2).

63-2561. Title of act. — This act may be cited as the “Tobacco Products Tax Act.” [1972, ch. 289, § 11, p. 725.]

STATUTORY NOTES

Compiler’s Notes. — The words “this act” refer to S.L. 1972, ch. 289 compiled as §§ 63-2551, 63-2552, and 63-2553 to 63-2561.

Section 12 of S.L. 1972, ch. 289 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates. — Section 13 of S.L. 1972, ch. 289 provided this act should take effect from and after July 1, 1972.

63-2562. Additions and penalties. — The additions, penalties and requirements provided by the Idaho income tax act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, shall apply in the same manner and to the same extent to this act as to the Idaho income tax act and shall cover acts, omissions, and delinquencies under the Idaho income tax act and such additions, penalties and requirements shall, for this purpose, be described and be for acts, omissions, delinquencies and requirements under the Idaho tobacco products tax act. [I. C., § 63-2562, as added by 1974, ch. 173, § 2, p. 1432.]

STATUTORY NOTES

Cross References. — Idaho income tax act, § 63-3001 et seq.
Tobacco products tax act, see § 63-2561.

Compiler’s Notes. — The words “this act” refer to S.L. 1974, ch. 173, compiled as §§ 63-2552, and 63-2562 — 63-2565.

63-2563. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho income tax act, sections 63-3038, 63-3039, 63-3042 through 63-3045A, 63-3047 through 63-3065A, 63-3068, 63-3071, 63-3075 and 63-3078, Idaho Code, shall apply and be available to the commission for the enforcement of this act and collection of any amounts due under this act and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as tobacco products tax liens and proceedings.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the tobacco products tax refund fund. [I. C., § 63-2563, as added by 1974, ch. 173, § 3, p. 1432; am. 2007, ch. 10, § 8, p. 10.]

STATUTORY NOTES

Cross References. — Idaho income tax act, § 63-3001 et seq.

Amendments. — The 2007 amendment,

by ch. 10, deleted “63-3070” following “63-3068” and inserted “63-3075” following “63-3071.”

Compiler's Notes. — The words "this act" refer to S.L. 1974, ch. 173, compiled as §§ 63-2552, and 63-2562 — 63-2565.

63-2564. Distribution of tax revenues. — (1) The revenues received from the taxes imposed by section 63-2552, Idaho Code, and any penalties, interest, or deficiency additions, shall be distributed by the tax commission as follows:

(a) An amount of money shall be distributed to the state refund account, sufficient to pay current refund claims. All refunds authorized by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(b) From the balance remaining with the state treasurer after deducting the amounts in subsection (a) of this section, all remaining moneys shall be remitted directly to the general fund of the state of Idaho and shall be remitted to that fund periodically, but no less frequently than quarterly. [I.C., § 63-2564, as added by 1974, ch. 173, § 4, p. 1432; am. 1976, ch. 51, § 16, p. 152; am. 1986, ch. 73, § 11, p. 201; am. 2000, ch. 60, § 3, p. 131.]

STATUTORY NOTES

Cross References. — State refund account, § 63-3067. 1976, ch. 51 provided the act should be in full force and effect on and after July 1, 1977.

Effective Dates. — Section 21 of S.L.

63-2565. Refunds, limitations, interest. — (a) Where there has been an overpayment of any tobacco products tax imposed by this act, the amount of such overpayment shall be credited against any tobacco products tax then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized and the state board of tax appeals is authorized to order the tax commission in proper cases to credit or remit, refund, and pay back all taxes and penalties erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claims for refund shall be certified to the state board of examiners by the state tax commission.

(c) No such credit or refund of taxes, penalties or interest paid, shall be allowed or made after three (3) years from the time the return was filed, unless before the expiration of such period a claim therefor is filed by the taxpayer with the commission.

(d) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid.

(e) Appeal of a tax commission decision denying in whole or part a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code. [I.C., § 63-2565, as added by 1974, ch. 173, § 5, p. 1432; am. 1981, ch. 290, § 11, p. 597.]

STATUTORY NOTES

Cross References. — Board of tax appeals, § 63-3801.

Compiler's Notes. — The words "this act" refer to S.L. 1974, ch. 173, compiled as §§ 63-

2552, and 63-2562 — 63-2565.

Effective Dates. — Section 6 of S.L. 1974, ch. 173 declared an emergency. Approved March 30, 1974.

CHAPTER 26

COUNTY SALES TAX

SECTION.

63-2601. Legislative findings. [Effective until December 31, 2009.]

63-2602. Authority for county sales or use tax. [Effective until December 31, 2009.]

63-2603. County property tax relief fund. [Effective until December 31, 2009.]

SECTION.

63-2604. General provisions. [Effective until December 31, 2009.]

63-2605. Collection and administration of local option sales or use taxes by the state tax commission — Distribution. [Effective until December 31, 2009.]

63-2606 — 63-2626. [Repealed.]

63-2601. Legislative findings. [Effective until December 31, 2009.]

— The legislature hereby finds that the increase in growth of the population of certain counties and the influx of great numbers of people traveling to those counties for sport, recreation and business have created a drain on the county infrastructure that is borne to an inequitable degree by the property owners of those counties. The legislature finds that it is both equitable and desirable to shift this tax burden in part from the property owners of the county to those visitors partaking of the services of the county. The legislature also finds that this objective must be subject to the approval and supervision of the voters of the county both through their elected officials and through direct input at the ballot box. [I.C., § 63-2601, as added by 2003, ch. 363, § 2, p. 969.]

STATUTORY NOTES

Prior Laws. — Former § 63-2601, comprising 1996, ch. 376, § 1, p. 1278, was repealed by S.L. 2003, ch. 363, § 1, p. 969.

Another former §§ 63-2601 — 63-2608 which comprised Init. Measure 1986, No. 1, S.L. 1987, § 1, p. 861, were repealed by § 1 of S.L. 1988, ch. 232 upon adoption of the amendment of Constitution Art. 3, § 20 (S.L. 1987, H.J.R. 3, p. 801) at the general election held on November 8, 1988.

Other former §§ 63-2601—63-2606, which comprised 1911, ch. 207, §§ 1-4, p. 678; reen. C.L. 125:1, 135:2-135:6, C.S., §§ 3354-3359; I.C.A., §§ 61-2101 — 61-2106, were repealed by S.L. 1965, ch. 120, § 1.

Effective Dates. — Section 4 of S.L. 2003, ch. 363, provides that this section "shall be null, void and of no force and effect on and after December 31, 2009."

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutionality.

Because of the population requirements contained therein, the former Resort County local option sales or use tax act, enacted by S.L. 1996, Chapter 376, was unconstitutional

as a local and special law in violation of Idaho Const., Art. III, § 19. Concerned Taxpayers of Kootenai County v. Kootenai County, 137 Idaho 496, 50 P.3d 991 (2002).

63-2602. Authority for county sales or use tax. [Effective until December 31, 2009.] — The voters of a county are given the authority to authorize their county government to adopt, implement and collect a sales tax or use tax upon all sales, without exception, that are subject to taxation under chapter 36, title 63, Idaho Code. The county commissioners of any such county are hereby given the freedom and authority to adopt, implement and collect a sales or use tax as provided herein if approved by the required minimum of sixty-six and two-thirds percent (66 2/3%) of county voters voting in an election conducted on the fourth Tuesday in May or on the first Tuesday after the first Monday in November. No local option sales or use tax proposal may be presented to county voters for approval or modification for a period of fifty-one (51) weeks after an election to approve or disapprove such tax. The question presented to the voters of a county shall state the rate of the local sales or use tax, the duration of the tax, which shall not exceed ten (10) years, and the purposes of the tax which shall be county property tax relief and debt retirement for expansion of detention facilities. [I.C., § 63-2602, as added by 2003, ch. 363, § 2, p. 969.]

STATUTORY NOTES

Prior Laws. — Former section 63-2602, comprising 1996, ch. 376, § 1, p. 1278, was repealed by S.L. 2003, ch. 363, § 1, p. 969.

Effective Dates. — Section 4 of S.L. 2003,

ch. 363, provides that this section “shall be null, void and of no force and effect on and after December 31, 2009.”

JUDICIAL DECISIONS

Cited in: Concerned Taxpayers of Kootenai County v. Kootenai County, 137 Idaho 496, 50 P.3d 991 (2002).

63-2603. County property tax relief fund. [Effective until December 31, 2009.] — (1) Any county which implements a sales or use tax pursuant to this chapter shall create and establish in the office of the county treasurer a county property tax relief fund into which shall be placed a minimum of fifty percent (50%) of any revenue received from the county sales or use tax. On or before the Tuesday following the first Monday in September of each year, the county treasurer shall submit to the board of county commissioners and the state tax commission a statement showing the balance in the county property tax relief fund as of September 1 of that year.

(2) No later than October 10, the balance in the county property tax relief fund, as of September 1, shall be distributed to the county and any cities within the county entitled to receive revenues from the county sales or use tax. Moneys distributed shall be in an amount proportional to the percentage that the previous year’s property tax portion of the budget subject to the limitations of section 63-802, Idaho Code, for the county and each city bears to the previous year’s total property tax portion of the budget subject to the limitations of section 63-802, Idaho Code, for the county and all cities in the county.

(3) The dollar amount subject to the limitations of section 63-802, Idaho Code, shall be the sum of the dollar amount of the portion of property taxes certified to the board of county commissioners under section 63-804, Idaho Code, and subject to the limitations of section 63-802, Idaho Code, as if no county property tax relief fund moneys were to be distributed, and the dollar amount to be received from the property tax relief fund. The division of the resulting sum by the value subject to taxation is a quotient that shall not exceed the levy limits prescribed by Idaho Code. If these limitations are exceeded, the board of county commissioners shall reduce any applicable budget request to comply with this section. The levy set to fund this portion of the budget shall be calculated based on the budget subject to the limitations of section 63-802, Idaho Code, less the money to be received from the county property tax relief fund. [I.C., § 63-2603, as added by 2003, ch. 363, § 2, p. 969.]

STATUTORY NOTES

Prior Laws. — Former section 63-2603, comprising 1996, ch. 376, § 1, p. 1278, was repealed by S.L. 2003, ch. 363, § 1, p. 969.

ch. 363, provides that this section “shall be null, void and of no force and effect on and after December 31, 2009.”

Effective Dates. — Section 4 of S.L. 2003,

63-2604. General provisions. [Effective until December 31, 2009.]

— Any ordinance assessing a tax pursuant to this chapter shall contain a finding by the board of county commissioners based upon evidence presented to it that the conditions set forth in section 63-2601, Idaho Code, exist and shall provide the methods for reporting and collecting taxes due. Taxes collected pursuant to any such ordinance shall be remitted to the county official designated in such ordinance or other such official contracting, pursuant to this chapter, with the county to provide collection services, and shall constitute revenue of the county available for county property tax relief and debt retirement for expansion of detention facilities. In any election, the ordinance submitted to county voters shall: (1) state and define the sales or use tax to be approved; (2) state the exact rate of the tax to be assessed, which in no event shall exceed five-tenths of one percent (0.5%) of the sales price of an item subject to taxation; (3) state that the revenues derived from the sales or use tax shall be used for county property tax relief and debt retirement for expansion of detention facilities; (4) state the duration of the tax which shall not be in excess of ten (10) years or the date the obligation has been met for the project for which the sales and use tax was passed pursuant to this chapter, whichever occurs first. The county clerk of any county adopting an ordinance, or any amendment thereto, shall forward a copy of the ordinance or amendment to the state controller, the chairman of the state tax commission and the chairman of the state board of tax appeals. [I.C., § 63-2604, as added by 2003, ch. 363, § 2, p. 969.]

STATUTORY NOTES

Cross References. — Chairman of board of tax appeals, § 63-3803.

comprising 1996, ch. 376, § 1, p. 1278, was repealed by S.L. 2003, ch. 363, § 1, p. 969.

Prior Laws. — Former section 63-2604,

Effective Dates. — Section 4 of S.L. 2003,

ch. 363, provides that this section “shall be null, void and of no force and effect on and after December 31, 2009.”

Section 42 of S.L. 1997, ch. 117 declared an

emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

63-2605. Collection and administration of local option sales or use taxes by the state tax commission — Distribution. [Effective until December 31, 2009.] — (1) Any county which has levied a tax pursuant to section 63-2602, Idaho Code, may contract with the state tax commission for the collection and administration of such taxes in like manner and under definitions and rules of the state tax commission for the collection and administration of the state sales or use tax under chapter 36, title 63, Idaho Code. A county which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of taxpayers relating to such tax. Alternatively, such county shall have authority to administer and collect such tax.

(2) All revenues collected by the state tax commission pursuant to section 63-2602, Idaho Code, shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund fund sufficient to pay current refund claims. All refunds authorized by the commission to be paid shall be paid through the state refund fund and those moneys are continuously appropriated.

(b) An amount of money equal to such fee as may be agreed upon between the state tax commission and such county for the actual cost of the collection and administration of the tax. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in subsection (2)(c) of this section.

(c) All remaining moneys received pursuant to this chapter shall be placed in a fund designated by the state controller and remitted monthly to the county levying such sales or use tax. [I.C., § 63-2605, as added by 2003, ch. 363, § 2, p. 969.]

STATUTORY NOTES

Cross References. — State refund tax, § 63-3067.

Prior Laws. — Former section 63-2605, comprising 1996, ch. 376, § 1, p. 1278, was repealed by S.L. 2003, ch. 363, § 1, p. 969.

Effective Dates. — Section 4 of S.L. 2003, ch. 363, provides that this section “shall be null, void and of no force and effect on and after December 31, 2009.”

63-2606 — 63-2608. Distribution formula — General provisions — Coordination with city local option nonproperty taxes — Collection and administration of local option sales or use taxes by the state tax commission — Distribution. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2003, ch. 363, § 1, effective May 8, 2003:

63-2606. (1996, ch. 376, § 1, p. 1278.)
63-2607. (1996, ch. 376, § 1, p. 1278.)
63-2608. (1996, ch. 376, § 1, p. 1278.)

63-2609 — 63-2626. State Lottery Commission. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections which comprised Init. Measure 1986, No. 1, of S.L. 1987, § 1, p. 861 were repealed by § 1 of S.L. 1988, ch. 232 upon adoption of the

amendment of Constitution Art. 3, § 20 (S.L. 1987, H.J.R. 3, p. 801) at the general election held on November 8, 1988. For present law see §§ 67-7401 et seq.

CHAPTER 27**LICENSE TAX ON ELECTRICITY****SECTION.**

63-2701. Statement of electric generating companies — Tax.

63-2702. Payment of tax — Distribution of revenue — Interest on delinquencies.

63-2702A. Refunds — Limitations — Interest.

63-2703. Certificate of producer — Contents.

63-2704. Statement of kilowatt hours produced.

SECTION.

63-2705. Exemption of electricity for pumping water for irrigation purposes.

63-2706. Compliance by subsequent owners.

63-2707. Penalty for false statement or affidavit.

63-2708. Collection and enforcement — Actions against state of Idaho.

63-2709, 63-2710. [Repealed.]

63-2711. Separability.

63-2701. Statement of electric generating companies — Tax. —

(1) In addition to the licenses and taxes now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization, now engaged or hereafter to engage in the generation, manufacture or production of electricity and electrical energy in the state of Idaho, through and by means of water power, for barter, sale, or exchange, and hereinafter referred to as the "producer," shall on or before the last day of each calendar month, render a statement to the state tax commission of the state of Idaho of all such electricity and electrical energy so generated, manufactured or produced by him or it in the state of Idaho, during the preceding calendar month and therewith pay a license tax of one-half mill per kilowatt hour on all such electricity and electrical energy so generated, manufactured or produced, except electricity and electrical energy generated or sold for use in manufacturing, mining, milling, smelting, refining and processing, as shown on such statement in the manner and within the time hereinafter provided.

(2) The state tax commission may by regulation provide for the filing of statements required in this section on a quarterly basis, in which case the statement shall be due on or before the last day of the calendar month following the end of the quarter to which the statement relates. [1931 (E.S.), ch. 3, § 1, p. 57; I.C.A., § 61-2201; am. 1949, ch. 248, § 1, p. 506; am. 1970, ch. 224, § 2, p. 631; am. 1986, ch. 91, § 1, p. 268.]

JUDICIAL DECISIONS

ANALYSIS

Double taxation.
 Interstate commerce.
 Judicial notice of federal tax.
 Municipality excluded.
 Validity.

Double Taxation.

Taxation of corporations under this chapter and under former § 30-603, requiring payment of annual license tax upon right to do business as corporation in state, does not constitute double taxation. *Utah Power & Light Co. v. Pfost*, 54 F.2d 803 (D. Idaho 1931), aff'd. 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Interstate Commerce.

This tax being upon the amount of electricity produced and not upon the amount sold or used, it is not a burden upon interstate commerce, although electricity may be produced for consumption outside of Idaho. *Utah Power & Light Co. v. Pfost*, 54 F.2d 803 (D. Idaho 1931), aff'd. 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Judicial Notice of Federal Tax.

Judicial notice will be taken that federal tax has been added as a distinct and separate item on electric bills, and that the state tax has not been so added. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

Municipality Excluded.

Statute imposing tax on production of electricity for barter, sale or exchange by "every individual, firm, partnership, common-law trust, corporation, association or other organization," does not include municipal corporations. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933). See also *Wilcox v. City of Idaho Falls*, 23 F. Supp. 626 (D. Idaho 1938).

Notwithstanding tax imposed on production of electricity for barter, sale or exchange is "excise tax," rather than "license tax," the fact that legislature called it "license tax" must be considered in determining whether statute applies to municipal corporations, since the constitution provides that "license tax" may not be imposed on municipal corporations. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

Validity.

The tax imposed by this law, being uniform throughout the state and equal upon the same class similarly situated, does not infringe upon the equality clauses of the state and federal constitutions. *Utah Power & Light Co. v. Pfost*, 54 F.2d 803 (D. Idaho 1931), aff'd. 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

This entire chapter is not necessarily invalid, even though § 63-2705 may be invalid. *Utah Power & Light Co. v. Pfost*, 54 F.2d 803 (D. Idaho 1931), aff'd. 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Where the title of an act insufficiently expresses the subject matter of the section, it does not become operative. *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933).

A sales tax law imposing a tax of two per cent of the gross receipts upon every "retail sale" is subject to referendum vote. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Cited in: *Lyons v. Bottolfson*, 61 Idaho 281, 101 P.2d 1 (1940).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 16.

63-2702. Payment of tax — Distribution of revenue — Interest on delinquencies. — (1) Said license tax shall be remitted with the statement required under section 63-2701, Idaho Code, and paid to the state tax commission, which shall distribute all moneys as follows:

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the state tax commission to be paid shall be paid through the state refund account, and those moneys are hereby continuously appropriated for that purpose.

Such refunds shall be authorized for the purpose of repaying overpayments made under this chapter, for the purpose of repaying any tax, penalty, or interest illegally assessed or collected, or for the purpose of paying any judgement rendered against the state tax commission under the provisions of this chapter.

(3) The balance shall be distributed to the general account.

(4) Taxes not paid on the due date shall become delinquent and shall bear interest from said due date at the rate provided in section 63-3045, Idaho Code. [1931 (E.S.), ch. 3, § 2, p. 57; I.C.A., § 61-2202; am. 1971, ch. 63, § 1, p. 142; am. 1981, ch. 290, § 7, p. 597; am. 1986, ch. 73, § 12, p. 201; am. 1986, ch. 91, § 2, p. 268; am. 1987, ch. 260, § 3, p. 545.]

63-2702A. Refunds — Limitations — Interest. — (1) If the tax commission determines that any amount due under this act has been paid more than once or has been erroneously or illegally collected or computed, the tax commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the tax commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The tax commission is authorized and the state board of tax appeals authorized to order the tax commission in proper cases to credit or refund such amounts whether or not such payments have been paid under protest and certify such refund to the state board of examiners.

(2) No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(3) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid. [I.C., § 63-2702A, as added by 1987, ch. 260, § 4, p. 545.]

STATUTORY NOTES

Compiler's Notes. — The term "this act", referred to in the first sentence in subsection (1), means S.L. 1987, Chapter 260, which is codified as §§ 23-1008, 63-2702, 63-2702A, 63-3067, and 63-3638A.

Effective Dates. — Section 10 of S.L.

1987, ch. 260 read: "An emergency existing therefor, which emergency is hereby declared to exist, Sections 2 and 9 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1986." Approved April 1, 1987.

63-2703. Certificate of producer — Contents. — Every producer referred to in section 63-2701 [, Idaho Code] engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the tax commission of the state of Idaho, on forms prescribed by the state tax commission, a duly acknowledged and verified certificate which shall contain: a, the name under which the producer is transacting business in the state of Idaho; b, his or its post-office address and principal place of business within the state; c, the address and location of his or its production plants or stations in Idaho; d, the name and address of the managing agent; e, the names and addresses of the several persons composing any firm or partnership constituting the producer, and, if a corporation, the corporate

name under which it is authorized to transact business and the names and addresses of its officers, directors, resident general agent and attorney in fact; f, certified copies of any papers necessary to show that such producer has complied with the laws of the state of Idaho in order to transact business in Idaho. [1931 (E.S.), ch. 3, § 3, p. 57; I.C.A., § 61-2203; am. 1971, ch. 63, § 2, p. 142.]

JUDICIAL DECISIONS

Construction.

A tax imposed on production of electricity for barter, sale or exchange is an excise tax, although called a "license tax," and is not

applicable to municipal corporations. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

63-2704. Statement of kilowatt hours produced. — Every such producer shall render to the state tax commission of the state of Idaho on forms prescribed, prepared and furnished by the state tax commission, the statement required under section 63-2701, Idaho Code, sworn to by the manager, president, secretary or treasurer of such producer, showing the number of kilowatt hours of electricity and electrical energy produced, generated or manufactured by him or it in the state of Idaho during the period to which the tax statement relates through and by means of water power, and the number of kilowatt hours subject to the tax imposed by this chapter. For the purpose of measuring such electricity and electrical energy such producer shall keep and maintain at the point or points of production, a recording watt hour meter or meters, or other suitable instrument for measuring the electricity or electrical energy produced, of a type to be approved by the state tax commission, and, subject to rules and regulations prescribed by the state tax commission under this chapter, shall compute the number of kilowatt hours subject to the tax imposed by this chapter during each monthly period, such recordings and computations to be kept on file at the principal place of business of such producer within the state of Idaho and same together with the books and records of such producer shall be subject to the inspection of the state tax commission, their deputies or assistants, during reasonable business hours. [1931 (E.S.), ch. 3, § 4, p. 57; I.C.A., § 61-2204; am. 1949, ch. 248, § 2, p. 506; am. 1971, ch. 63, § 3, p. 142; am. 1986, ch. 91, § 3, p. 268.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1949, ch. 248 provided that the act should be in force on and after June 1, 1949.

63-2705. Exemption of electricity for pumping water for irrigation purposes. — All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Idaho or for pumping water for drainage purposes on or from land in the state of Idaho is exempt from the provisions of this chapter, except in cases where the water so pumped is sold or rented to such irrigated lands: provided, the

exemption here given shall accrue to the benefit of the consumer of such electricity or electrical energy: provided further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemptions had not been made, shall be credited annually for the year in which the exemptions are made on the power bill to the consumer by the producer of such electricity and electrical energy, furnishing such power, and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Idaho, or for the purpose of pumping water for drainage purposes on or from lands in the state of Idaho to the tax commission of the state of Idaho as a part of the statement required by section 63-2701 [, Idaho Code], together with a statement of the credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Idaho, or for pumping water for drainage purposes on or from lands in the state of Idaho. [1931 (E. S.), ch. 3, § 5, p. 57; I.C.A., § 61-2205; am. 1941, ch. 41, § 1, p. 88; am. 1971, ch. 63, § 4, p. 142.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1941, ch. 41 declared an emergency. Approved February 26, 1941.

JUDICIAL DECISIONS

Constitutionality.

Provision for reduction of charges to certain consumers is not a taking of property without due process of law, since public utilities commission in fixing rates takes into consideration all taxes paid and exemptions required

to be allowed. *Utah Power & Light Co. v. Pfost*, 54 F.2d 803 (D. Idaho 1931), *aff'd*. 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Cited in: *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

63-2706. Compliance by subsequent owners. — Any producer of electricity or electrical energy referred to in section 63-2701 [, Idaho Code] who shall hereafter engage in the generation, production or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant, or installing equipment therefor, comply with the requirements of section 63-2703 [, Idaho Code]. [1931 (E. S.), ch. 3, § 6, p. 57; I.C.A., § 61-2206.]

63-2707. Penalty for false statement or affidavit. — Any person, officer, partner, agent or representative of any producer referred to in section 63-2701 [, Idaho Code], who shall make any false statement or affidavit in any certificate, report or statement herein required to be made to the state tax commission hereunder shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary not less than one (1) nor more than fourteen (14) years. [1931 (E. S.), ch. 3, § 7, p. 57; I. C. A., § 61-2207; am. 1971, ch. 63, § 5, p. 142.]

63-2708. Collection and enforcement — Actions against state of Idaho. — (1) In addition to the enforcement and penalty provisions in this chapter, the deficiency in tax, notice of deficiency and collection and enforcement procedures provided by the Idaho income tax act, in sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045, 63-3045A, 63-3045B, 63-3046, 63-3047, 63-3048 through 63-3065A, 63-3068, 63-3071, and 63-3075 through 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this chapter and for the assessment and collection of any amounts due under this chapter. Wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this chapter, be described as kilowatt hour tax liens and proceedings.

(2) The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid as provided for payment of refunds under this chapter. [I.C., § 63-2708, as added by 1997, ch. 55, § 2, p. 93.]

STATUTORY NOTES

Prior Laws. — Former § 63-2708, which comprised 1931 (E.S.), ch. 3, § 8, p. 57; I.C.A., § 61-2208; am. 1971, ch. 63, § 6, p. 142; am. 1992, ch. 49, § 5, p. 151, was repealed by S.L. 1997, ch. 55, § 1, effective July 1, 1997.

63-2709, 63-2710. Deduction in state property tax — Bond of commissioner of law enforcement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising 1931 (E. S.), ch. 3, §§ 9, 10, p. 57; I.C.A., §§ 61-2209, 61-2210, were repealed by S.L. 1971, ch. 63, § 7. Section 63-2710 was also repealed by S.L. 1971, ch. 136, § 52, p. 522.

63-2711. Separability. — If any section or provision of this chapter be adjudged unconstitutional or invalid for any reason, such adjudication shall not affect the validity of this chapter as a whole or of any section or provision thereof which is not specifically so adjudged unconstitutional or invalid. [1931 (E. S.), ch. 3, § 11, p. 57; I.C.A., § 61-2211.]

JUDICIAL DECISIONS

Legislative Intent.
It may be assumed that legislature, in acting this section, had in mind every provision of this chapter, including § 63-2705. *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

CHAPTER 28

TAXATION OF PROFITS OF MINES

SECTION.

- 63-2801. Valuation of mines for taxation.
- 63-2802. Net profits defined.
- 63-2803. Statement of net profits.
- 63-2804. Statement as to entire group.
- 63-2805. False statements constitute perjury.
- 63-2806. Examination of books — Penalty for false statement.

SECTION.

- 63-2807. Confidential information — Penalty for disclosure.
- 63-2808. Assessment without statement.
- 63-2809. Assessment book.
- 63-2810. General duties of officers.
- 63-2811. Collection of tax lien.

63-2801. Valuation of mines for taxation. — All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead, coal or other valuable mineral or metal deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of said mine or mining claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground or any part thereof so used for other than mining purposes, shall be taxed at its value for such other purposes, and all machinery used in mining, and all property and surface improvements upon mines or mining claims, which have a value separate and independent of such mines or mining claims and the net annual proceeds of all mines and mining claims shall be taxed: provided, that nothing in this chapter contained must be construed so as to exempt from taxation improvements, buildings, erections, structures or machinery placed upon any mining claims, or used in connection therewith: provided that all mineral rights reserved to any grantor, except the United States or the state of Idaho, by the terms of any conveyance of lands other than lands acquired under the mining laws of the United States shall be assessed for taxation purposes at the rate of not less than five dollars (\$5.00) per acre of the mineral rights so reserved, to be assessed against the recorded owner thereof. When, in the opinion of the county assessor, the value of reserved mineral rights does not warrant the expenditure to appraise and assess such value, such de minimis values need not be appraised or assessed, but the failure to assess such values does not constitute a failure to pay such taxes on the part of the owner, and does not constitute a delinquency on the part of the owner. [1903, p. 4, § 1, and last sentence of § 8; compiled and reen. R.C., § 1863; reen. C.L., § 1863; I.C.A., § 61-2301; am. 1937, ch. 70, § 1, p. 94; am. 1941, ch. 159, § 1, p. 317; am. 1988, ch. 212, § 1, p. 402.]

STATUTORY NOTES

Cross References. — Mining claims not patented exempt from taxation, § 63-602F.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Validity.

Constitutionality.

An occupation excise tax on miners, although levied in addition to concurrent ad valorem and income taxes, all for support of public schools, does not result in "duplicate taxation" violative of constitutional prohibition. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Validity.

Method of taxing mining property prescribed in this chapter is not violative of Idaho

Const., Art. 7, §§ 2, 3, 5, 8. *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916).

Assessment of mines under this chapter was held an assessment upon the full value thereof, although the assessment might be under an inequitable method, the validity of the statute not having been questioned. *Washington Water Power Co. v. Shoshone County*, 270 F. 377 (9th Cir. 1921).

63-2802. Net profits defined. — The term "net profits," as employed in this chapter, means the amount of money received from the mining of said metals or minerals from said mine or mining claim, after the deduction of the actual expenditure of money and labor in and about extracting the metals and minerals from the mine or mining claim, and transporting the same to the mill, concentrator or reduction works, and the reduction thereof, and the conversion of the same into money, or its equivalent, and also the deduction of all moneys expended for necessary labor, machinery and supplies needed and used in the mining operations, for the improvements necessary in and about the mine or mining claim, for reducing ores, for the construction of the mills and reduction works used and operated in connection with the mine or mining claim, for transporting the ore, and for extracting the metals and minerals therefrom; but the money invested in the mine, or improvements made during any year except the year immediately preceding such statement, must not be included therein. Such expenditures do not include the salaries, or any portion thereof, of any person or officers not actually engaged in the working of the mine, or personally superintending the management thereof. [1903, p. 4, § 4; reen. R.C. & C.L., § 1864; C.S., § 3361; I.C.A., § 61-2302.]

63-2803. Statement of net profits. — Every person, corporation or association engaged in mining upon any quartz vein or lode, or placer mining claim, containing gold, silver, copper, lead, coal or other precious and valuable minerals or metals, or mineral or metal deposits, must, between the first day of January and the first day of May in each year, make out a statement of the net profits derived from the mining of said metals or minerals, from each mine or mining claim owned or worked by such person, or from each group of mines or mining claims worked by a common system of development, during the year preceding the first day of January. Such statement must be verified by the oath of such person, or superintendent or managing agent of such corporation or association, who must deliver the same to the assessor of the county in which such mines are situated. [1903, p. 4, § 2; reen. R.C. & C.L., § 1865; C.S., § 3362, I.C.A., § 61-2303.]

JUDICIAL DECISIONS**ANALYSIS**

Constitutionality.

Lode and placer mining taxed.

Constitutionality.

A request by commissioner of law enforcement [now defunct] for more information than is contained in statutory report required in connection with occupation excise tax on mining is not such an enlargement of or departure from commissioner's necessarily implied powers as collecting officer as to render his acts unconstitutional. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

An act imposing occupation excise tax on mining is not objectionable as failing to identify ore whose net value determines amount of tax. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The title of act imposing occupation excise tax on mining sufficiently expresses subject of act to meet constitutional requirements, al-

though title does not specify provisions of act that proceeds of tax should go into public school fund and that duplicate copy of statement of net proceeds required under statute must be delivered to commissioner of law enforcement [now defunct], where title contains reference to determining measure of tax and its distribution. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Lode and Placer Mining Taxed.

An act imposing license tax for privilege of "mining or extracting ores" upon all persons in business of mining "any quartz vein or lode, or placer mining claim" taxes privilege both of lode and placer mining. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

63-2804. Statement as to entire group. — Where the same person or company or association is operating two (2) or more mining claims under one (1) general system of mining or development, the product of which group of mines is mingled and treated as one (1) mining operation, the statement of the owner provided herein to be made, and the assessment provided herein to be made by the assessor, shall be made as to such entire group, and need not be made as to each particular mining claim constituting said group. [1903, p. 4, § 5; reen. R.C. & C.L., § 1866; C.S., § 3363; I.C.A., § 61-2304.]

63-2805. False statements constitute perjury. — If any one herein required to make a statement shall knowingly and wilfully swear to any false statement contained therein, then such person shall be guilty of perjury, and shall be prosecuted and punished as provided for in other cases of perjury. [1903, p. 4, § 10; reen. R. C. & C.L., § 1867; C.S., § 3364; I. C. A., § 61-2305.]

STATUTORY NOTES

Cross References. — Punishment for perjury, § 18-5409.

63-2806. Examination of books — Penalty for false statement. — The assessor, after such statement has been rendered, shall have the right to examine the books and accounts of any person, corporation or association engaged in mining as mentioned in this chapter, in order to verify the statement made by such person, corporation or association, and if from such examination he finds such statement false, he must assess the net proceeds in the same manner as if no statement had been made and delivered, by making an estimate from the best sources within his reach, and if satisfied that the false statement was intentionally so made, he shall add as a penalty therefor, to the amount of the net proceeds so found, fifty per cent (50%) thereof, which amount thus increased shall constitute the sum upon which the taxes must be levied and collected, and such assessment shall be binding, effectual and lawful, and the value so fixed by the assessor shall not

be reduced by the county board of equalization. [1903, p. 4, § 8; reen. R. C., part of § 1868; reen. C.L., § 1868; C.S., § 3365; I.C.A., § 61-2306.]

63-2807. Confidential information — Penalty for disclosure. — All information derived from any examination of the books and accounts made pursuant to this chapter by the assessor, or anyone acting for him or representing him, shall be deemed to be and held as confidential communications not to be communicated to any other person by the person making such examination, or anyone to whom the knowledge of such examination or facts therein disclosed shall come, except when it becomes necessary as a part of the performance of the public duty of such person to disclose the same in any proceeding affecting the validity of said assessment or taxation, or for the prosecution for perjury of the person required to make the statement mentioned in this chapter. Any person or officer making such disclosure or violating such confidence, except as herein provided, shall be deemed guilty of a felony, and upon conviction thereof shall be removed from office and punished as in case of other felonies. [1903, p. 4, § 8; am. R. C., part of § 1868; reen. C.L., § 1868a; C.S., § 3366; I.C.A., § 61-2307.]

STATUTORY NOTES

Cross References. — Punishment for felony where no penalty provided, § 18-112.

63-2808. Assessment without statement. — If any person, corporation or association, engaged in mining as mentioned in this chapter, refuses or neglects to make and deliver to the assessor of the county where the mines are located, the statement mentioned in this chapter, such assessor must list the property and assess, according to his knowledge and information, the amount of said tax in the manner provided by the law for the assessment of other property where no statement is furnished. [1903, p. 4, § 7; reen. R. C. & C.L., § 1869; C.S., § 3367; I.C.A., § 61-2308.]

63-2809. Assessment book. — The assessor must prepare at the time of the preparation of the general assessment book, another assessment book called the assessment book of the net profits of mines, alphabetically arranged, in which must be listed the net profits of all the mines in his county, and in which must be specified in separate columns and under appropriate heads:

1. The name of the owner or owners of the mines.
2. The name, description and location of the mine.
3. The number of tons extracted during the year.
4. The gross yield or value in dollars and cents.
5. The actual cost of extracting the same from the mine.
6. The actual cost of transportation to the place of reduction or sale.
7. The actual cost of reduction or sale.
8. The cost of construction of betterments and repair of mines and reduction works during the year.
9. The net profits in dollars.

10. The total amount of taxes. [1903, p. 4, § 3; reen. R. C. & C.L., § 1870; C.S., § 3368; I.C.A., § 61-2309.]

63-2810. General duties of officers. — The duties of the assessor, tax collector, county auditor, state tax commission and the county board of equalization, as to the assessment of the net profits of mines, the statements and returns to be made, the equalization thereof, and other official acts, are the same as those provided by the laws of this state for the assessment of other property. [1903, p. 4, § 6; reen. R. C. & C.L., § 1871; C. S., § 3369; I.C.A., § 61-2310; am. 1969, ch. 455, § 81, p. 1205.]

JUDICIAL DECISIONS

Mandamus.

Since the duties of the officials named in this section are purely ministerial, mandamus is the proper remedy to enforce the

performance of those duties. State ex rel. Williams v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

63-2811. Collection of tax lien. — The tax mentioned in the preceding sections must be collected, and payment thereof enforced, as the collection and enforcement of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ores or minerals are extracted, which lien attaches on the first day of January of each year, and the sale thereof for delinquent taxes may be made as provided for the sale of real estate for delinquent taxes. [1903, p. 4, § 9; reen. R. C. & C.L., § 1872; C.S., § 3370; I.C.A., § 61-2311; am. 1969, ch. 455, § 82, p. 1205.]

STATUTORY NOTES

Cross References. — Assessment of undivided interest, § 63-212.

Compiler's Notes. — Section 84 of S.L. 1969, ch. 455 read: "The state tax commission, the various county assessors, the various county treasurers, and all other officers concerned shall take all necessary action to insure that an orderly and efficient transfer of duties occurs on the effective dates of this act."

Effective Dates. — Section 85 of S.L.

1969, ch. 455 read: "Sections 1 through 8 and sections 11 through 83 of this act shall be in full force and effect on and after January 1, 1970. An emergency existing therefor, sections 9 and 10 of this act shall be in full force and effect upon their passage and retroactively to January 1, 1969. Section 84 of this act shall be in full force and effect on and after its passage and approval." Approved April 7, 1969.

JUDICIAL DECISIONS

Interest of Tenants in Common.

Interests of tenants in common in mining property may be separately assessed and separately sold for delinquent taxes. Hanley v. Federal Mining & Smelting Co., 235 F. 769 (D. Idaho 1916).

Cited in: State ex rel. Williams v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

CHAPTER 29

THE IDAHO CORPORATE HEADQUARTERS INCENTIVE ACT OF 2005

SECTION.

63-2901. Short title.

63-2902. Definitions.

63-2903. Additional income tax credit for capital investment.

63-2904. Real property improvement tax credit.

63-2905. Additional income tax credit for new jobs.

SECTION.

63-2906. Limitations, and other provisions on credits against income taxes.

63-2907. Recapture.

63-2908. Sales and use tax incentives — Rebates — Recapture.

63-2909. Property tax incentives.

63-2910. Administration.

63-2901. Short title. — This chapter shall be known and may be cited as “The Idaho Corporate Headquarters Incentive Act of 2005.” [I.C., § 63-2901, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Compiler’s Notes. — Former chapter 29 of title 63 (§§ 63-2901 — 63-2909), which comprised S.L. 1947, ch. 239; 1951, ch. 259 and which was titled “Punchboards, Chance Spindles, and Chance Prize Game Tax”, was declared unconstitutional by *State v. Village*

of Garden City, 74 Idaho 513, 265 P.2d 328 (1953) as an attempt to legalize lotteries and authorize their operation.

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2902. Definitions. — (1) The definitions contained in the Idaho income tax act, shall apply to this chapter unless modified in this chapter or unless the context clearly requires another definition.

(2) As used in this chapter:

(a) “Commission” means the Idaho state tax commission.

(b) “Headquarters or administrative facilities” means facility or facilities, including related parking facilities, where corporate staff employees are physically employed, and where the majority of the company’s services are handled either on a regional or national basis. Company services may include: accounts receivable and payable, accounting, data processing, distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchasing/procurement, planning, reporting and compliance, tax, treasury, or other headquarters-related services.

(c) “Idaho income tax act” means chapter 30, title 63, Idaho Code.

(d) “Investment in new plant” means investment in headquarters or administrative facilities, that are:

(i) Qualified investments; or

(ii) Buildings or structural components of buildings.

(e) “New employee”:

(i) Means an individual, employed primarily within the project site by the taxpayer, subject to Idaho income tax withholding whether or not any amounts are required to be withheld, covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, and who was eligible to receive employer provided coverage under a health benefit plan as described in section 41-4703, Idaho Code, during the taxable

year. A person shall be deemed to be so employed if such person performs duties on a regular full-time basis.

(ii) The number of employees employed primarily within the project site by the taxpayer, during any taxable year for a taxpayer shall be the mathematical average of the number of such employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (e)(i) of this subsection (2). In the event the business is in operation for less than the entire taxable year, the number of employees of the taxpayer for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e)(i) of this subsection (2) are met.

(iii) Existing employees of the taxpayer who obtain new qualifying positions within the project site and employees transferred from a related taxpayer or acquired as part of the acquisition of a trade or business from another taxpayer within the prior twelve (12) months are not included in this definition unless the new position or transfer creates a net new job in Idaho.

(f) "Project period" means the period of time beginning at the earlier of a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, but no earlier than January 1, 2005, and ending when the facilities constituting the project are placed in service, but no later than December 31, 2009.

(g) "Project site" means an area or areas at which headquarters and headquarters facilities are located and at which the tax incentive criteria have been or will be met and which are either:

(i) A single geographic area located in this state at which the headquarters or administrative facilities owned or leased by the taxpayer are located; or

(ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required by subsection (2)(j)(i) of this section is made at one (1) of the areas.

(iii) The project site must be identified and described to the commission by a taxpayer subject to tax under the Idaho income tax act, in the form and manner prescribed by the commission.

(h) "Qualified investment" shall be defined as in section 63-3029B, Idaho Code.

(i) "Recapture period" means:

(i) In the case of credits described in sections 63-2903 and 63-2904, Idaho Code, the same period for which a recapture of investment tax credit under section 63-3029B, Idaho Code, is required; or

(ii) In the case of credits described in section 63-2905, Idaho Code, five (5) years from the date the project period ends.

(j) "Tax incentive criteria" means a taxpayer meeting at a project site the requirements of both subparagraphs (i) and (ii) of this paragraph (j).

(i) During the project period, making capital investments in new plant of at least fifty million dollars (\$50,000,000) at the project site.

(ii) During a period of time beginning on January 1, 2005, and ending at the conclusion of the project period:

1. Increasing employment at the project site by at least five hundred (500) new employees:

(A) Each of whom must earn at least twenty-four dollars and four cents (\$24.04) per hour worked during the taxpayer's taxable year; or

(B) Each of whom is part of a group of five hundred (500) or more employees at the project site which group on average earns at least twenty-eight dollars and eighty-five cents (\$28.85) per hour worked during the taxpayer's taxable year. Calculation of the group average earnings may not include amounts paid to any employee earning more than ninety-six dollars and fifteen cents (\$96.15) or less than fifteen dollars and fifty cents (\$15.50) per hour worked during the taxpayer's taxable year.

(C) Earnings calculated pursuant to subparagraph (ii) of this paragraph (j) shall include income upon which Idaho income tax withholding is required under section 63-3035, Idaho Code, but shall not include income such as stock options or restricted stock grants.

(D) For purposes of determining whether the increased employment threshold has been met, employment at the project site shall be determined by calculating the increase of such new employees reported to the Idaho department of labor for employment security purposes over the employees so reported as of the beginning of the project period or no earlier than January 1, 2005, whichever is larger; and

2. Maintaining net increased employment in Idaho required by subparagraph (ii)1. of this paragraph (j) during the remainder of the project period.

(k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsection (2), means either:

(i) A single taxpayer; or

(ii) In the context of a unitary group filing a combined report under section 63-3027(t), Idaho Code, all members of a unitary group includable in a combined report for the tax years in which the credit provided for by this chapter may be claimed.

For all other purposes, the terms of section 63-3009, Idaho Code, and section 63-3027(t)(1), Idaho Code, apply to the meaning of "taxpayer." [I.C., § 63-2902, as added by 2005, ch. 369, § 1, p. 1169; am. 2007, ch. 360, § 21, p. 1061.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 360, in subsections (2)(e)(ii) and (2)(j)(ii)1.(D), deleted "commerce and" following "department of."

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2903. Additional income tax credit for capital investment. —

(1) For taxable years beginning on or after January 1, 2005, and before December 31, 2009, and subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, in regard to qualified investments made after the beginning of the project period and before December 31, 2009, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of six percent (6%) of the amount of qualified investment made during a taxable year, wherever located within this state.

(2) The credit allowed by this section shall not be subject to the fifty percent (50%) limitation provided in section 63-3029B, Idaho Code.

(3) The credit allowed by this section shall not exceed five million dollars (\$5,000,000) in any one (1) taxable year. [I.C., § 63-2903, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2904. Real property improvement tax credit. -- (1) For taxable years beginning on or after January 1, 2005, and before December 31, 2009, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of ten percent (10%) of the investment in new plant which is incurred during the project period applicable to the project site in which the investment is made.

(2) The credit allowed by this section shall not exceed five hundred thousand dollars (\$500,000) in any one (1) taxable year.

(3) No credit is allowable under this section for a qualified investment in regard to which a credit under section 63-2903, Idaho Code, is available.

(4) The credit allowed by this section is limited to buildings and structural components of buildings related to headquarters or administrative facilities. [I.C., § 63-2904, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2905. Additional income tax credit for new jobs. — (1) Subject to the limitations of this chapter, for taxable years beginning on or after January 1, 2005, and before December 31, 2009, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, for the number of new employees earning more

than a rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu of the credit amount in subsection (2)(a) of section 63-3029F, Idaho Code, be allowed the credit provided by this section. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following:

- (a) The number of employees for the prior taxable year; or
- (b) The average of the number of employees for the three (3) prior taxable years.

(2) The credit provided by this section shall be:

(a) One thousand five hundred dollars (\$1,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than twenty-four dollars and four cents (\$24.04) per hour worked but equal to or less than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked;

(b) Two thousand dollars (\$2,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but equal to or less than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked;

(c) Two thousand five hundred dollars (\$2,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but equal to or less than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked;

(d) Three thousand dollars (\$3,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked.

(3) The credit allowed by subsection (1) of this section shall apply only to employment primarily within the project site. No credit shall be earned unless such employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(4) The credit allowed by this section shall not be subject to the fifty percent (50%) limitation provided in section 63-3029F, Idaho Code.

(5) Employees transferred from a related taxpayer or acquired from another taxpayer within the prior twelve (12) months shall not be included in the computation of the credit unless the transfer creates a net new job in Idaho. [I.C., § 63-2905, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2906. Limitations, and other provisions on credits against income taxes. — (1) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing a credit under this chapter to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate; and

(b) The method by which the carryover of credits and the duty to recapture credits shall survive and be transferred in the event of reorganizations, mergers or liquidations.

(2) In the case of a unitary group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credits against income tax provided by sections 63-2903, 63-2904 and 63-2905, Idaho Code, earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the limitation in subsection (3) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member or members who earned the credit are no longer included in the combined group.

(3) The total of all credits allowed by sections 63-2903, 63-2904 and 63-2905, Idaho Code, together with any credits carried forward under subsection (4) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter, chapter 44, title 63, Idaho Code, and the Idaho income tax act.

(4) If the credits exceed the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed:

(a) The next fourteen (14) taxable years in the case of credits allowed by sections 63-2903 and 63-2904, Idaho Code; or

(b) The next ten (10) taxable years in the case of credits allowed by section 63-2905, Idaho Code. [I.C., § 63-2906, as added by 2005, ch. 369, § 1, p. 1169; am. 2006, ch. 195, § 6, p. 599.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 195, inserted "chapter 44, title 63, Idaho Code" in subsection (3).

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively

to January 1, 2005. Approved April 13, 2005.

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

63-2907. Recapture. — (1) In the event that any person to whom a tax credit allowed by section 63-2903, 63-2904 or 63-2905, Idaho Code, fails to meet the tax incentive criteria, the full amount of the credit shall be subject to recapture by the commission.

(2) If, during any taxable year, an investment in new plant is disposed of, or otherwise ceases to qualify with respect to the taxpayer, prior to the close of the recapture period, recapture of the credit allowed by sections 63-2903 and 63-2904, Idaho Code, shall be determined for such taxable year in the same proportion and subject to the same provisions as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(3) In the event that the employment required in section 63-2902(2)(j), Idaho Code, is not maintained for the entire recapture period, recapture of

the credit allowed in section 63-2905, Idaho Code, shall be determined for such taxable year in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code. This subsection shall not be construed to require that the required level of employment must be met by the same individual employees.

(4) Any amount subject to recapture is a deficiency in tax for the amount of the credit in the taxable year in which the disqualification first occurs and may be enforced and collected in the manner provided by the Idaho income tax act, provided however, that in lieu of the provisions of section 63-3068(a), Idaho Code, the period of time within which the commission may issue a notice under section 63-3045, Idaho Code, in regard to an amount subject to recapture shall be the later of five (5) years after the end of the taxable year in which the project period ends or three (3) years after the end of the taxable year in which any amounts carried forward under section 63-2906, Idaho Code, expire. [I.C., § 63-2907, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2908. Sales and use tax incentives — Rebates — Recapture. —

(1) For calendar years beginning on January 1, 2005, and ending on December 31, 2009, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within the project site shall be entitled to receive a rebate of all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its contractors actually paid in regard to any property constructed, located or installed within the project site during the project period for that site.

(2) Upon filing of a written refund claim by the taxpayer entitled to the rebate, and subject to such reasonable documentation and verification as the commission may require, the rebate shall be paid by the commission as a refund allowable under section 63-3626, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.

(3) Any rebate paid shall be subject to recapture by the commission:

(a) At one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period, or

(b) In the event that the property is not used, stored or otherwise consumed within the project site for a period of sixty (60) consecutive full months after the property was placed in service, or

(c) In the event that the employment required in section 63-2902(2)(j), Idaho Code, is not maintained for sixty (60) consecutive full months from the date the project period ends.

(d) Any recapture required by subsection (3)(b) or (3)(c) of this section shall be in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(4) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in lieu of the provisions of section 63-3633, Idaho Code, the period of time within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture, shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends.

(5) The rebate allowed by this section is limited to sales and use taxes actually paid by the taxpayer or its contractors for taxable property related to headquarters or administrative facilities. [I.C., § 63-2908, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-2909. Property tax incentives. — (1) Subject to the limitations of this chapter, both improvements to real property and personal property which are newly constructed, including construction in progress during the year, or acquired during a project period and located in the project site and owned by a taxpayer who has certified that the tax incentive criteria will be met in regard to that site, shall be entitled to receive a rebate of the lesser of:

- (a) All property taxes the taxpayer actually paid for any of the years 2005 through 2012 that are properly levied upon any property constructed or installed within the project site during the project period for that site; or
- (b) All property tax the taxpayer actually paid for any of the years 2005 through 2012 that are properly levied upon any property constructed or installed within the area described in subsection (2)(g)(ii) of section 63-2902, Idaho Code, within which eighty percent (80%) or more of the investment required in subsection (2)(j)(i) of section 63-2902, Idaho Code, is made during the project period for that site; or
- (c) Two million dollars (\$2,000,000) of property tax paid in any one (1) calendar year.

(2) Upon filing of a written claim by the taxpayer entitled to the rebate, which shall include a description of the property upon which the tax sought to be rebated was levied, the property's assessed value for property tax purposes, and its location and subject to such reasonable documentation and verification as the commission may require, the rebate shall be paid by the commission as provided in section 63-3067, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year of the property taxes sought to be rebated or the right to the rebate is lost.

(3) The taxpayer shall be subject to recapture of any rebate paid under this section:

- (a) At one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period, or
- (b) In the event that the property is disposed of, or otherwise ceases to qualify with respect to the taxpayer before five (5) full years from the date the project period ends, or
- (c) In the event that the employment required in section 63-2902(2)(j), Idaho Code, is not maintained for sixty (60) consecutive full months from the date the project period ends.
- (d) Any recapture required by subsection (3)(b) or (3)(c) of this section shall be in the same proportion of the credit required to be recaptured under section 63-3029B, Idaho Code.
- (e) Any amount subject to recapture is a deficiency in tax for the amount of the rebate in the taxable year in which the disqualification first occurs and may be enforced and collected in the manner provided by the Idaho income tax act, provided however, that in lieu of the provisions of section 63-3068(a), Idaho Code, the period of time within which the commission may issue a notice under section 63-3045, Idaho Code, in regard to an amount subject to recapture shall be five (5) years after the end of the taxable year in which the project period ends.
- (4) The rebate allowed by this section is limited to improvements to real property and personal property which are newly constructed, including construction in progress during the year, or acquired related to headquarters or administrative facilities. [I.C., § 63-2909, as added by 2005, ch. 369, § 1, p. 1169; am. 2006, ch. 59, § 3, p. 183.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 59, deleted the former paragraph following subsection (1)(c) which read: "Property upon which tax is rebated by this section, which is included on the new construction roll provided in section 63-301A, Idaho Code, shall be separately identified on that roll."

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

Section 4 of S.L. 2006, ch 59 declared an emergency retroactively to January 1, 2006 and approved March 14, 2006.

63-2910. Administration. — The commission shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of those provisions, including the promulgation of rules relating to information necessary to certify that the incentive criteria have been or will be met. For the purpose of carrying out its duties to enforce or administer the provisions of this chapter, the commission shall have the powers and duties provided by sections 63-3038, 63-3039, 63-3042 through 63-3067, 63-3068, 63-3071, 63-3074 through 63-3078 and 63-217, Idaho Code. [I.C., § 63-2910, as added by 2005, ch. 369, § 1, p. 1169.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

CHAPTER 30

INCOME TAX

SECTION.

- 63-3001. Title.
- 63-3002. Declaration of intent.
- 63-3003. Definitions.
- 63-3004. Internal Revenue Code.
- 63-3005. Person.
- 63-3006. Corporation.
- 63-3006A. Limited liability company — Classification and taxation.
- 63-3006B. Partnership.
- 63-3007. Fiduciary.
- 63-3008. Individual.
- 63-3009. Taxpayer.
- 63-3010. Taxable year.
- 63-3011. Gross income.
- 63-3011A. Adjusted gross income.
- 63-3011B. Taxable income.
- 63-3011C. Idaho taxable income.
- 63-3012. Includes and including.
- 63-3013. Resident.
- 63-3013A. Part-year resident.
- 63-3014. Nonresident.
- 63-3015. Qualified funeral trusts.
- 63-3016. Paid or incurred and paid or accrued.
- 63-3017. Employer.
- 63-3018. Employee.
- 63-3019. [Repealed.]
- 63-3020. Farmer.
- 63-3021. Net operating loss.
- 63-3022. Adjustments to taxable income.
- 63-3022A. Deduction of certain retirement benefits.
- 63-3022B. Deduction for insulation of residences.
- 63-3022C. Deduction for alternative energy device at residence.
- 63-3022D. Deduction of expenses for household and dependent care services.
- 63-3022E. Household deduction for dependents sixty-five years of age or older or persons with developmental disabilities.
- 63-3022F. Computation of tax where taxpayer restores substantial amount held under the claim of right.
- 63-3022G. Moneys paid to Japanese-Americans for reparations for World War II displacement.
- 63-3022H. Deduction of capital gains.
- 63-3022I. Adoption expenses.
- 63-3022J. Deduction of value for technological equipment.
- 63-3022K. Medical savings account.
- 63-3022L. Individuals who are officers, directors, shareholders, partners or members of a corporation or

SECTION.

- partnership or beneficiaries of a trust or estate.
- 63-3022M. Expenses and interest relating to tax exempt income.
- 63-3022N. Marriage penalty adjustment.
- 63-3022O. Adjustment — Property acquired after September 10, 2001 — Expenses of elementary and secondary teachers — Small business expenses — Limitations on assessments and refunds.
- 63-3022P. Health insurance costs.
- 63-3022Q. Long-term care insurance.
- 63-3023. Transacting business. [Effective until January 1, 2008.]
- 63-3023. Transacting business. [Effective January 1, 2008.]
- 63-3023A, 63-3023B. [Repealed.]
- 63-3024. Individuals' tax and tax on estates and trusts.
- 63-3024A. Credits and refunds.
- 63-3024B. Income tax credits. [Null and void.]
- 63-3025. Tax on corporate income.
- 63-3025A. Franchise tax.
- 63-3025B. Organizations exempt from the tax imposed by this chapter.
- 63-3025C. Corporations exempt from minimum tax.
- 63-3025D. Payment for dependents sixty-five years of age or older or persons with developmental disabilities.
- 63-3026. Computing Idaho taxable income of resident individuals, trusts and estates.
- 63-3026A. Computing Idaho taxable income of part-year or nonresident individuals, trusts and estates.
- 63-3027. Computing Idaho taxable income of multistate or unitary corporations.
- 63-3027A. Computing Idaho taxable income of corporations not subject to section 63-3027, Idaho Code.
- 63-3027B. Water's-edge election.
- 63-3027C. Election is binding — Treatment of dividends.
- 63-3027D. Presumptions and burdens of proof.
- 63-3027E. Operative dates.
- 63-3028. [Repealed.]
- 63-3029. Credit for income taxes paid another state.
- 63-3029A. Income tax credit for charitable contributions — Limitation.
- 63-3029B. Income tax credit for capital investment.

SECTION.

- 63-3029C. Income tax credit for certain charitable contributions — Limitation.
- 63-3029D. Tax credit for qualified equipment utilizing postconsumer waste or postindustrial waste.
- 63-3029E. Definitions — Construction of terms.
- 63-3029F. Special credit available — New employees.
- 63-3029G. Credits for research activities conducted in this state — Carry forward.
- 63-3029H. [Amended and Redesignated.]
- 63-3029I. Income tax credit for investment in broadband equipment.
- 63-3029J. Incentive income tax investment credit.
- 63-3029K. Tax credit for live organ donation expenses.
- 63-3029L. [Reserved.]
- 63-3029M. Income tax credit for capital investment in biofuel infrastructure. [Effective until January 1, 2012.]
- 63-3029N, 63-3039O. [Reserved.]
- 63-3029P. Priority of credits.
- 63-3030. Persons required to make returns of income.
- 63-3030A. Mandate to compel return.
- 63-3031. Joint returns.
- 63-3032. Time for filing income tax returns.
- 63-3033. Extension of time.
- 63-3034. Payment of tax.
- 63-3035. State withholding tax on percentage basis — Withholding, collection and payment of tax.
- 63-3035A. State income tax withholding tax on lottery winnings.
- 63-3035B. Joint power authorization.
- 63-3035C. Revocation and suspension of withholding accounts — Penalties.
- 63-3036. State withholding tax for farmers.
- 63-3036A. Payment of estimated tax.
- 63-3037. Information returns.
- 63-3038. Administration.
- 63-3039. Rules and regulations — Publication of statistics and law.
- 63-3039A. [Repealed.]
- 63-3040. Examination of return and determination of tax.
- 63-3041. Overpayments.
- 63-3042. Examination of books and witnesses.
- 63-3043. Contempt.
- 63-3044. Deficiency in tax.
- 63-3045. Notice of redetermination or deficiency — Interest.
- 63-3045A. Assessment of tax.
- 63-3045B. Final decisions of the commission.
- 63-3046. Penalties and additions to the tax in case of deficiency.

SECTION.

- 63-3046A. Interest on underpayment of estimated tax.
- 63-3046B. Failure to file partnership return.
- 63-3047. Compromised cases.
- 63-3048. Adjusted or compromised cases — Closing agreements.
- 63-3049. Judicial review.
- 63-3050. Action to collect unpaid tax or deficiency.
- 63-3051. Property subject to lien.
- 63-3052 — 63-3054. [Repealed.]
- 63-3055. Release or subordination of income tax lien.
- 63-3056. Action to enforce lien.
- 63-3057. Distrain on personal property.
- 63-3058. Exempt property.
- 63-3059. Levy or distraint warrant.
- 63-3060. Proceedings on levy or distraint.
- 63-3061. Successive seizures.
- 63-3061A. Notice of levy and distraint.
- 63-3062. Production of books.
- 63-3063. Collection by distraint not exclusive.
- 63-3064. Other remedies preserved.
- 63-3065. Jeopardy assessments.
- 63-3065A. Jurisdiction over nonresidents.
- 63-3066. Legal adviser.
- 63-3067. Revenue received — State refund account.
- 63-3067A. Designation by individuals — Trust accounts.
- 63-3067B. Designation by individuals — Trust accounts.
- 63-3067C. Sunsetting designations.
- 63-3067D, 63-3067E. [Repealed.]
- 63-3068. Period of limitations for issuing a notice of deficiency and collection of tax.
- 63-3069. Notice of adjustment of federal or state tax liability.
- 63-3069A. Special statute of limitations.
- 63-3070. [Repealed.]
- 63-3071. Destruction of old returns.
- 63-3072. Credits and refunds.
- 63-3073. Interest on refunds and credits.
- 63-3074. Actions against state of Idaho.
- 63-3075. Penalties.
- 63-3076. Penalty for divulging information.
- 63-3077. Information furnished to certain officials.
- 63-3077A. Agreements for exchange of information and joint administration with department of labor.
- 63-3077B. Agreements for exchange of information with industrial commission.
- 63-3077C. Agreement for exchange of information with department of fish and game.
- 63-3077D. Agreement for collection of tax.
- 63-3078. Failure to collect and pay over tax, or attempt to evade of [or] defeat tax.

SECTION.

- 63-3079. Franchise tax not repealed.
 63-3080. Not a property tax.
 63-3081. [Repealed.]
 63-3082. Additional tax required when filing
 income tax return.
 63-3083. "Person" defined.
 63-3084. Tax additional to other income
 taxes.

SECTION.

- 63-3085. Date tax due and payable.
 63-3086. Persons exempt from tax.
 63-3087. Collection and enforcement.
 63-3088. Designation by individuals.
 63-3089. [Repealed.]

63-3001. Title. — This act shall be known and may be cited as the "Idaho Income Tax Act." [1959, ch. 299, § 1, p. 613.]

STATUTORY NOTES

Compiler's Notes. — A prior income tax law S.L. 1931 (E.S.), ch. 2, §§ 1-80 as amended formerly compiled as §§ 63-3001 — 63-3088 was repealed by § 82 of S.L. 1959, ch. 299 and the new tax law assigned the same section numbers.

Section 12 of S.L. 1967, ch. 294, read: "In the event the office of the tax collector is merged with the state tax commission, determinations, jeopardy determinations, redeterminations, compromises, closing agreements and similar responsibilities required to be performed by the tax collector under the Idaho Income Tax Act and the Idaho Sales Tax Act shall be performed by the member of the state tax commission assigned the duty of

supervisor of the division of taxation involved." The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission.

The words "this act" refer to S.L. 1959, ch. 299 compiled as §§ 63-3001 to 63-3006, 63-3007, 63-3010, 63-3012, 63-3013, 63-3014, 63-3016 to 63-3018, 63-3020, 63-3022, 63-3023, 63-3024, 63-3027, 63-3029, 63-3030, 63-3031 to 63-3035, 63-3036, 63-3037 to 63-3039, 63-3040 to 63-3045, 63-3046, 63-3047 to 63-3051, 63-3055 to 63-3061, 63-3062 to 63-3065, 63-3066, 63-3067, 63-3069, 63-3071, 63-3073 to 63-3077, and 63-3078 to 63-3080. The reference probably should be to "this chapter".

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Income earned outside state.

Retroactive application of law.

Constitutionality.

Where the enrolling clerk erroneously copied into Session Laws 1959, ch. 299, as originally enacted, the figure "3.5" instead of "3" in § 24, subd. a (§ 63-3024), as the house amendment provided, but all three of the divisions of legislative power — the house, the senate, and the governor — approved the house amendment and made it a part of the act, the bill was constitutionally enacted as amended by the house. *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 342 P.2d 706 (1959).

Income Earned Outside State.

In enacting the Idaho Income Tax Act, the legislative intent was to impose a tax on the residents of this state measured by taxable

income wherever derived, and no exemption is granted. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

Retroactive Application of Law.

An income tax law may apply retroactively to recent transactions, including the receipt of income during the year of the legislative session preceding that during which the income tax law was enacted, the constitutional validity of such retroactive provisions being well established. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

Cited in: *Hecla Mining Co. v. Idaho State Tax Comm'n*, 108 Idaho 147, 697 P.2d 1161 (1985).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.

Construction.

Corporate capital stock.
Declaratory judgment act.
Deductions.
Excise tax on mining.
"Gross income" defined.
Income earned outside state.
Intangible personal property.
Interpretation as to gross income.
Interstate commerce.
Motor fuel tax.
Nature of income tax.
Situs of income.
Taxes paid without protest.
Traveling expenses.

Constitutionality.

Statutory provision that income should not be classified as property did not offend against state or federal constitution. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Legislature is not precluded from enacting an income tax law because there is no express provision therefor in the constitution. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The statute was not invalid as duplicate taxation of property. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The law was not invalid as imposing a burden on interstate commerce. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The law did not violate uniformity of taxation, due process, and equal protection clauses of state and federal constitutions, because of its provisions imposing a progressively graduated tax, allowing greater exemptions to married than to single persons, withholding from corporations credits allowed to individuals, and directing funds derived hereunder to be applied to reduction of state ad valorem levy. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The law imposes upon those who derive gain from within the state a fair and equitable tax, levied in graduated proportion upon their ability to pay, which is, in all respects, valid and constitutional. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The legislature, in defining the term "gross income" of life insurance companies to mean the gross amount received during a taxable year from interest, dividends and rents arising within the state, legislated within its power so to do. *John Hancock Mut. Life Ins. Co. v. Haworth*, 68 Idaho 185, 191 P.2d 359 (1948).

The tax imposed did not violate the 14th Amendment of the U.S. Constitution or the due process clause of the Idaho Constitution where the interest received by the water company upon bonds payable in another state was interest arising within the state within the meaning of the law imposing the tax on

gross income of insurers, it being reasonably related to benefits conferred by the state and income arising out of the state. *John Hancock Mut. Life Ins. Co. v. Neill*, 79 Idaho 385, 319 P.2d 195 (1957).

Construction.

Where statute defining "gross income," which should be included in determining income tax, was copied in the most part from federal statute, the fact that the Idaho statute did not contain provision corresponding to provision of the federal statute, providing for taxation of salaries of president and federal judges, was convincing evidence of legislative intent not to tax salaries of state constitutional officers. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1932).

The concept of the words "trade," and "business" implies activities engaged in with a direct profit motive, in occupational and commercial aspects and the court so construed their meanings. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

The Property Relief Act of 1931 and amendments having incorporated in substantial part the provisions of the Federal Revenue Act, would be presumed as adopted with its prior constructions by the courts of the foreign jurisdiction. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

Corporate Capital Stock.

The statute exempting corporate capital stock from taxation after payment of income tax was upheld, as the income tax was in lieu of any tax on the shares of stock of such corporation. *First Second Bank v. Fremont County*, 55 Idaho 76, 37 P.2d 1101 (1934).

Declaratory Judgment Act.

The Declaratory Judgment Act, relating to the construction of statutes, comprehended an action to determine a nonresident's obligation to pay tax on net income with relation to the business transacted under the Liquor Control Act. *Century Distilling Co. v. Defenbach*, 61 Idaho 192, 99 P.2d 56 (1940).

Action for declaratory judgment by foreign corporation against state tax commissioner to

determine corporation's obligation to pay tax on net income, with relation to its business transacted under the Liquor Control Act, was not an "action against the state" for maintenance of which state's consent was necessary. *Century Distilling Co. v. Defenbach*, 61 Idaho 192, 99 P.2d 56 (1940).

Deductions.

Plaintiffs were entitled to deduct medical and hospital expenses in the sum of \$2,901.18 less \$100 from their state income tax regardless of reimbursement for such expenses received from insurance companies. *Taylor v. Neill*, 80 Idaho 90, 326 P.2d 391 (1958).

The fact that a small portion of Idaho Power Company's revenue was derived from business and properties outside of the state was not made a point for decision. The act contemplated an apportionment and deduction of income and expenses from outside the state. *John Hancock Mut. Life Ins. Co. v. Neill*, 79 Idaho 385, 319 P.2d 195 (1957).

The clause "under regulations promulgated by the tax collector" contained in the statute could not be construed as a grant of legislative power authorizing the tax collector to limit the deduction which the legislature had allowed, such regulations so authorized having been only such as were needful for the enforcement of the law as written by the legislature and not to have been used to add to or detract therefrom. *Taylor v. Neill*, 80 Idaho 90, 326 P.2d 391 (1958).

Excise Tax on Mining.

An excise tax on mining is a form of charge imposed by public authority for the purpose of raising revenue upon the performance of an act, the enjoyment of a privilege, and the engaging in an occupation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

"Gross Income" Defined.

Provision of state income tax statute that, for the purpose of determining "gross income," the decisions under the federal income tax act should be the rule of decisions in the state courts, and by the state tax commissioner, disclosed intent of the state legislature to adopt interpretation previously placed upon the adopted statute by the United States Supreme Court to effect that salaries of certain officials were not considered as gross income within the federal act. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

Income Earned Outside State.

Clearly, appellants, residents of the state of Idaho, did not receive royalty from their conducting and carrying on a trade or business outside the state of Idaho, having a business situs in the state of Wyoming. *Kopp v. Baird*,

79 Idaho 152, 313 P.2d 319 (1957).

Appellants, residents of the state of Idaho, did not allege a trade or business conducted or carried on by them having a situs in the state of Wyoming from which they derived their income, therefore, presumptively by failure so to allege, such facts did not exist. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

Intangible Personal Property.

Royalty agreed to be paid under an oil and gas lease in instances where, as here, no sale was involved in clearing the royalty to be credited upon the sale price was an agreed share of the value of the oil extracted and was the right to share in personal property when it came into existence as such and as such was intangible personal property which ordinarily followed a person and had its taxable situs at the domicile of the owner. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

Interpretation as to Gross Income.

The state income tax statute, providing that "gross income" does not include income which may not be by the federal constitution or laws included in "gross income," did not manifest an intention to tax the salaries of federal officials, on the ground that the United States Supreme Court decision holding that states were authorized to tax such salaries, and the federal statute authorizing states to tax such salaries had declared that there had never been any bar to such taxation, and that the legislature intended to tax such salaries when the previous bar should be lifted, where the state and federal governments were not authorized to tax the salaries of each other's officials when the income tax statute was passed. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Interstate Commerce.

Pursuant to agreement with liquor control commission, an Illinois corporation shipped liquors into the state for storage in a warehouse from which liquors were withdrawn on requisition of commission, the title remaining with the corporation until the liquors were withdrawn and tested by the commission, and on delivery to warehouse the shipments were severed from "interstate commerce," as regards whether corporation was under obligation to make return and pay tax on net income. Under these circumstances the company was doing business in the state, and was under the obligation to make a return and pay tax on net income, notwithstanding the liquor control commission was the only possible purchaser of the liquor. *Century Distilling Co. v. Defenbach*, 61 Idaho 192, 99 P.2d 56 (1940).

Motor Fuel Tax.

A large part of the expenses of state government is borne by excise tax, not ad valorem. A

tax on motor fuels is an excise tax and not unconstitutional. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Nature of Income Tax.

Income tax is an excise tax and not a tax on property within the constitutional provision requiring uniformity based on value. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Situs of Income.

Clearly appellants, residents of the state of Idaho, did not receive royalty from their conducting and carrying on a trade or business outside the state of Idaho, having a business situs in the state of Wyoming. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

Where the interest on bonds was paid out of the earnings of the Idaho Power Company and Boise Water Corporation, and the earnings of these companies arose out of business carried on within the state, the interest, being a portion of such earnings, therefore arose within the state and the fact that the interest was sent by the obligors to a New York trustee for payment of the bond obligation did not require the conclusion that it arose in New York. *John Hancock Mut. Life Ins. Co. v. Neill*, 79 Idaho 385, 319 P.2d 195 (1957).

Taxes Paid Without Protest.

Taxes cannot be recovered unless there was a protest made at the time of their payment.

Income taxes fall within the rule. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Traveling Expenses.

Traveling expenses claimed by respondent from his home in Pocatello to his place of temporary employment and return where the employer recognized the travel necessity of his, as well as other workmen, living at a distance from the temporary work of the employer, it being impracticable for the workmen to move their homes to the site of such temporary employment, the employer granting a per diem allowance for such expenses, were deductible items of expense under the provisions and within the meaning of the statute. *Carlson v. Idaho State Tax Comm'n*, 80 Idaho 337, 329 P.2d 1019 (1958).

The expenses of the employee going to and from his work where employee had an established tax home, the places of his employment were located at isolated points where local supply of skilled labor was entirely inadequate, the employment of such as respondent was limited and temporary, it was impractical to move to the points of employment, employer paid reimbursement to employees for traveling expenses to and from home, are deductible is a well recognized principle. *Carlson v. Idaho State Tax Comm'n*, 80 Idaho 337, 329 P.2d 1019 (1958).

RESEARCH REFERENCES

A.L.R. — Reasonableness of compensation paid to officers or employees, so as to warrant

deduction thereof in computing employer's income tax. 10 A.L.R.3d 125.

63-3002. Declaration of intent. — It is the intent of the legislature by the adoption of this act, insofar as possible to make the provisions of the Idaho act identical to the provisions of the Federal Internal Revenue Code relating to the measurement of taxable income, to the end that the taxable income reported each taxable year by a taxpayer to the internal revenue service shall be the identical sum reported to this state, subject only to modifications contained in the Idaho law; to achieve this result by the application of the various provisions of the Federal Internal Revenue Code relating to the definition of income, exceptions therefrom, deductions (personal and otherwise), accounting methods, taxation of trusts, estates, partnerships and corporations, basis and other pertinent provisions to gross income as defined therein, resulting in an amount called "taxable income" in the Internal Revenue Code, and then to impose the provisions of this act thereon to derive a sum called "Idaho taxable income"; to impose a tax on residents of this state measured by Idaho taxable income wherever derived and on the Idaho taxable income of nonresidents which is the result of activity within or derived from sources within this state. All of the foregoing is subject to modifications in Idaho law including, without limitation, modifications applicable to unitary groups of corporations, which include

corporations incorporated outside the United States. [1959, ch. 299, § 2, p. 613; am. 1969, ch. 319, § 1, p. 982; am. 1970, ch. 222, § 1, p. 621; am. 1993, ch. 284, § 1, p. 958; am. 1995, ch. 111, § 1, p. 347.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is compiled as 26 U.S.C. § 1 et seq.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act" near beginning of section, see Compiler's Notes, § 63-3001.

The words "this act" near the end of the first sentence refer to S.L. 1995, Chapter 111, which is codified as §§ 63-3002, 63-3011 to 63-3011C, 63-3013, 63-3013A, 63-3021, 63-3022, 63-3022B, 63-3022C, 63-3022E, 63-3022G, 63-3022H, 63-3022J, 63-3023, 63-3024, 63-3025 to 63-3025B, 63-3026 to 63-3027A, and 63-3029. The reference probably

should be to "this chapter".

Effective Dates. — Section 7 of S.L. 1993, ch. 284 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993; provided however, that by written election filed by a taxpayer with the state tax commission, Sections 1 through 3 of this act shall apply to such taxpayer for all tax years beginning prior to January 1, 1993, as to which the period of limitations for assessment and collection of tax has not expired." Approved March 31, 1993.

JUDICIAL DECISIONS

ANALYSIS

Deductions.

Misinterpretation of law.

Nonresidents income.

Deductions.

Dentist used his condominium for personal purposes by renting the unit to his own professional corporation and then staying there while attending professional conferences and dentist's contention that such a use could not have been for personal reasons because the tax commission did not challenge the deduction of the rent as a business expense by dentist's professional corporation was without merit under this section. *Houston v. State Tax Comm'n*, 126 Idaho 718, 889 P.2d 1108 (1995).

Misinterpretation of Law.

Where the tax commission has defended its case without foundation and unreasonably in misreading and misinterpreting this section and § 63-3022 to its advantage it can be assessed attorney's fees under § 12-121. *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 693 P.2d 1056 (1984).

Nonresidents Income.

A train crews' presence in this state while traveling on transcontinental trains is not a sufficient nexus under the due process clause

of the Fourteenth Amendment and the commerce clause of the United States Constitution to allow this state to subject the compensation they earn while traveling through this state to state income taxes; thus the application of this state's income tax statutes to the income of train crews while traveling through this state is unconstitutional. *Blangers v. State, Dep't of Revenue & Taxation*, 114 Idaho 944, 763 P.2d 1052 (1988).

Cited in: *Lockridge v. Amalgamated Ass'n of St. Elec. Ry. & Motor Coach Empl., of Am.*, 84 Idaho 201, 369 P.2d 1006 (1962); *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964); *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965); *North Idaho Jurisdiction of Episcopal Churches, Inc. v. Kootenai County*, 94 Idaho 644, 496 P.2d 105 (1972); *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 556 P.2d 1197 (1976); *Albertson's, Inc. v. State, Dep't of Revenue*, 106 Idaho 810, 683 P.2d 846 (1984); *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986); *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 820 P.2d 1206 (1991).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 443.

A.L.R. — State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

63-3003. Definitions. — When used in this act, the terms defined in this chapter shall have the meanings respectively ascribed to them. [1959, ch. 299, § 3, p. 613; am. 1992, ch. 11, § 1, p. 17.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3001.

63-3004. Internal Revenue Code. — (a) The term "Internal Revenue Code" means the Internal Revenue Code of 1986 of the United States, as amended, and in effect on the first day of January, 2007.

(b) Provisions of the Internal Revenue Code amended, deleted, or added prior to the effective date of the latest amendment to this section shall be applicable for Idaho income tax purposes on the effective date provided for such amendments, deletions, or additions, including retroactive provisions. [1959, ch. 299, § 4, p. 613; am. 1961, ch. 328, § 1, p. 622; am. 1963, ch. 339, § 1, p. 971; am. 1965, ch. 316, § 1, p. 880; am. 1967, ch. 294, § 1, p. 828; am. 1969, ch. 319, § 2, p. 982; am. 1970, ch. 222, § 2, p. 621; am. 1971, ch. 302, § 1, p. 1242; am. 1972, ch. 398, § 1, p. 1149; am. 1973, ch. 44, § 1, p. 79; am. 1974, ch. 56, § 1, p. 1118; am. 1975, ch. 12, § 1, p. 17; am. 1976, ch. 3, § 1, p. 12; am. 1977, ch. 1, § 1, p. 3; am. 1978, ch. 138, § 1, p. 313; am. 1979, ch. 255, § 1, p. 678; am. 1981, ch. 80, § 1, p. 113; am. 1982, ch. 11, § 1, p. 16; am. 1983, ch. 97, § 1, p. 209; am. 1984, ch. 35, § 1, p. 55; am. 1985, ch. 131, § 1, p. 326; am. 1986, ch. 11, § 1, p. 53; am. 1987, ch. 93, § 1, p. 176; am. 1988, ch. 2, § 1, p. 3; am. 1988, ch. 373, § 1, p. 1107; am. 1989, ch. 7, § 1, p. 8; am. 1990, ch. 34, § 1, p. 49; am. 1991, ch. 7, § 1, p. 18; am. 1991, ch. 55, § 1, p. 99; am. 1992, ch. 5, § 1, p. 10; am. 1993, ch. 1, § 1, p. 3; am. 1994, ch. 38, § 1, p. 56; am. 1995, ch. 79, § 1, p. 209; am. 1996, ch. 24, § 1, p. 59; am. 1997, ch. 19, § 1, p. 29; am. 1998, ch. 52, § 1, p. 206; am. 1999, ch. 27, § 1, p. 39; am. 2000, ch. 16, § 1, p. 32; am. 2001, ch. 58, § 1, p. 110; am. 2002, ch. 59, § 1, p. 127; am. 2003, ch. 350, § 1, p. 937; am. 2004, ch. 20, § 1, p. 22; am. 2005, ch. 14, § 1, p. 41; am. 2006, ch. 242, § 1, p. 736; am. 2007, ch. 13, § 1, p. 24.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 242, substituted "January, 2006" for "January, 2005" in subsection (a).

The 2007 amendment, by ch. 13, substituted "January, 2007" for "January, 2006" in subsection (a).

Federal References. — The Internal Revenue Code of 1986, referred to in this section is compiled as 26 U.S.C. § 1 et seq.

Effective Dates. — Section 2 of S.L. 1973, ch. 44 declared an emergency and provided that the act should take effect retroactively to January 1, 1973. Approved February 26, 1973.

Section 2 of S.L. 1974, ch. 56 declared an emergency and provided that the act should

take effect retroactively to January 1, 1974. Approved March 11, 1974.

Section 2 of S.L. 1975, ch. 12 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1975, and that those changes effected by the Employee Retirement Income Security Act of 1974, P. L. 93-406, amending sections 401 through 404 of the Internal Revenue Code and related sections shall be in full force and effect retroactively to January 1, 1974, and effective upon the effective dates after that date recited in appropriate sections of P. L. 93-406." Approved February 28, 1975.

Section 2 of S.L. 1976, ch. 3 declared an emergency and provided the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved February 3, 1976.

Section 2 of S.L. 1977, ch. 1 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977. Approved February 4, 1977.

Section 2 of S.L. 1978, ch. 138 declared an emergency and provided that the act should be in full force and effect on and after its approval retroactive to January 1, 1978. Approved March 17, 1978.

Section 2 of S.L. 1979, ch. 255 declared an emergency and made the act effective retroactively to January 1, 1979. Approved March 30, 1979.

Section 2 of Acts 1981, ch. 80 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1981; provided, however, that the amendments made to the Internal Revenue Code by the Installment Sales Revision Act of 1980 shall be in full force and effect in this state on and after the date provided in that act." Approved March 23, 1981.

Section 2 of S.L. 1982, ch. 11 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1982; provided, however, that the amendments made to the Internal Revenue Code by the Economic Recovery Tax Act of 1981 shall be in full force and effect in this state on and after the dates provided in that act." Approved February 24, 1982.

Section 2 of S.L. 1983, ch. 97 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1983; provided, however, that the amendment made to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982, the Subchapter "S" Revision Act of 1982 (P.L. 97-354), the Miscellaneous Revenue Act of 1982 (P.L. 97-362) and the Technical Corrections Bill of 1982 (P.L. 97-448) shall be in full force and effect in defining the term "Internal Revenue Code" on and after the dates provided in those acts." Approved March 29, 1983.

Section 2 of S.L. 1985, ch. 131 declared an emergency. Approved March 21, 1985 and provided that it should be in full force and effect on and after its passage and approval retroactive to January 1, 1984.

Section 2 of S.L. 1986, ch. 11 read: "An emergency existing therefor, which emer-

gency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1986." Approved February 26, 1986.

Section 2 of S.L. 1988, ch. 2 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 1988." Approved February 16, 1988.

Section 2 of S.L. 1988, ch. 373 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 1988." Became law without the governor's signature, April 1, 1988.

Section 2 of S.L. 1989, ch. 7 declared an emergency and provided that the act should become effective retroactive to January 1, 1989. Approved February 23, 1989.

Section 5 of S.L. 1991, ch. 7 declared an emergency and provided that sections 1 and 2 of the act would be in full force and effect on and after their passage and approval retroactively to January 1, 1991. Approved February 12, 1991.

Section 2 of S.L. 1992, ch. 5 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1992." Approved February 21, 1992.

Section 2 of S.L. 1993, ch. 1 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993." Approved February 19, 1993.

Section 2 of S.L. 1994, ch. 38, declared an emergency and provided this act shall be in full force and effect on and after February 9, 1994, and retroactively to January 1, 1994." Approved February 25, 1994.

Section 2 of S.L. 1995, ch. 79, declared an emergency and provided that this act shall be in full force and effect on and after March 10, 1995, and retroactively to January 1, 1995. Approved March 10, 1995.

Section 2 of S.L. 1996, ch. 24 declared an emergency and provided that the act would be in full force and effect on and after passage and approval retroactive to January 1, 1996. Approved February 14, 1996.

Section 2 of S.L. 1997, ch. 19 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to January 1, 1997. Approved February 19, 1997.

Section 2 of S.L. 1998, ch. 52 declared an

emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 2 of S.L. 1999, ch. 27 declared an emergency retroactively to January 1, 1999 and approved February 25, 1999.

Section 2 of S.L. 2000, ch. 16 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

Section 2 of S.L. 2001, ch. 58 declared an emergency retroactively to January 1, 2001 and approved March 19, 2001.

Section 3 of S.L. 2002, ch. 59 declared an emergency retroactively to January 1, 2002. Approved March 4, 2002.

Section 3 of S.L. 2004, ch. 20 declared an emergency retroactively to January 1, 2004. Approved March 5, 2004.

Section 3 of S.L. 2005, ch. 14 declared an emergency retroactively to January 1, 2005, except to the extent that Section 1 [this section] may apply to Public Law 109-001 for which purpose the effective date of this act shall be January 7, 2005 and approved February 18, 2005.

Section 2 of S.L. 2006, ch. 242 declared an emergency retroactively to January 1, 2006 and approved March 30, 2006.

Section 2 of S.L. 2007, ch. 13, declared an emergency retroactively to January 1, 2007, and approved February 14, 2007.

OPINIONS OF ATTORNEY GENERAL

Because it was not in effect prior to January 1, 1995, the effective date of the 1995 amendment to this section, the deduction for computing federal taxable income for health care costs incurred by self-employed individuals and provided by Pub. L. No. 104-7, signed into law April 11, 1995, and retroactive to January

1, 1994, is not available to taxpayers on their 1994 Idaho income taxes. OAG 95-2.

This section is annually amended and updated to avoid any possibility of an apparent adoption of federal law changes that significantly affect state tax policy without legislative approval. OAG 95-2.

63-3005. Person. — The term “person” means an individual, a trust or estate, a partnership, an association, a limited liability company or a corporation. [1959, ch. 299, § 5, p. 613; am. 1998, ch. 55, § 1, p. 208.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1998, ch. 55 declared an emergency and provided this act shall be in full force and effect on and

after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 512-517.

63-3006. Corporation. — The term “corporation” includes any corporation formed under the laws of any government, any common law trust and any association of whatever kind other than a partnership. “Corporation” also includes any entity classified or taxed as a corporation pursuant to section 7701 or 7704 of the Internal Revenue Code and the regulations of the U.S. department of the treasury issued thereunder. [1959, ch. 299, § 6, p. 613; am. 1998, ch. 55, § 2, p. 208; am. 1999, ch. 60, § 1, p. 156.]

STATUTORY NOTES

Federal References. — Sections 7701 and 7704 of the Internal Revenue Code, referred to in this section, are compiled as 26 U.S.C. §§ 7701 and 7704, respectively.

Effective Dates. — Section 4 of S.L. 1998,

ch. 55 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 5 of S.L. 1999, ch. 60 declared an emergency retroactively to January 1, 1999 and approved March 15, 1999.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Single Title of Act.

Inclusion in amendatory statute, providing for corporate taxation, of exemption of bank stock therefrom is not violative of the constitutional provision respecting singleness of title. *First Second Bank v. Fremont County*, 55 Idaho 76, 37 P.2d 1101 (1934).

Reference in title of amendatory statute, providing for corporate taxation, to section numbers of statute to be amended is sufficient compliance with constitutional requirement as to the singleness of title. *First Second Bank v. Fremont County*, 55 Idaho 76, 37 P.2d 1101 (1934).

63-3006A. Limited liability company — Classification and taxation. — Notwithstanding the provisions of section 63-3006, Idaho Code, for the purposes of chapter 30, title 63, Idaho Code, a limited liability company as defined in subsection (5) or (6) of section 53-601, Idaho Code, shall be classified as a partnership, corporation, unincorporated association or otherwise pursuant to the provisions of the internal revenue code. A limited liability company that is classified as a partnership pursuant to the internal revenue code shall be treated as a partnership for purposes of chapter 30, title 63, Idaho Code. A limited liability company that is classified other than a partnership pursuant to the internal revenue code shall be treated for purposes of chapter 30, title 63, Idaho Code, in accordance with its classification. [I.C., § 63-3006A, as added by 1993, ch. 224, § 2, p. 760.]

STATUTORY NOTES

Federal References. — The internal revenue code, referred to in this section, is codified as 26 U.S.C.S. § 7 et seq.

63-3006B. Partnership. — “Partnership” shall be as defined in section 7701 of the Internal Revenue Code and shall include any entity classified as a partnership pursuant to regulations of the U.S. department of the treasury issued under section 7701 of the Internal Revenue Code, but shall not include a publicly traded partnership taxed as a corporation under section 63-3006, Idaho Code. [I.C., § 63-3006B, as added by 1998, ch. 55, § 3, p. 208; am. 1999, ch. 60, § 2, p. 156.]

STATUTORY NOTES

Federal References. — Section 7701 of the Internal Revenue Code is codified as 26 U.S.C.S. § 7701.

Effective Dates. — Section 4 of S.L. 1998, ch. 55 declared an emergency and provided this act shall be in full force and effect on and

after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 5 of S.L. 1999, ch. 60 declared an emergency retroactively to January 1, 1999 and approved March 15, 1999.

RESEARCH REFERENCES

A.L.R. — State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

63-3007. Fiduciary. — The term “fiduciary” means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in a position of trust or fiduciary capacity for any other person or group of persons. [1959, ch. 299, § 7, p. 613.]

63-3008. Individual. — The term “individual” means a natural person. [1959, ch. 299, § 8, p. 613.]

63-3009. Taxpayer. — The term “taxpayer” means any person subject to a tax imposed by this act or required by the provisions of this act to file an income tax return, report income or pay a tax. [1959, ch. 299, § 9, p. 613; am. 1969, ch. 319, § 3, p. 982.]

STATUTORY NOTES

Compiler’s Notes. — For first occurrence of words “this act”, see Compiler’s Notes, § 63-3001.

The second occurrence of the words “this act” refers to S.L. 1969, Chapter 319, which is codified as §§ 63-3002, 63-3004, 63-3009, 63-

3010, 63-3013A, 63-3022, 63-3024, 63-3027, 63-3031, 63-3033, 63-3035, 63-3036, 63-3045, 63-3046, 63-3056, 63-3073, 63-3076, 63-3077, 63-3083, and 63-3087.

Probably both references should be to “this chapter”.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Officials Exempt from Income Tax.

Constitutional officers were exempted from the operation of the state income tax laws and

were not liable therefor. The secretary of state was exempt. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

63-3010. Taxable year. — The term “taxable year” with respect to any taxpayer means:

(1) The taxable year of such taxpayer required pursuant to the Internal Revenue Code; or

(2) Such other period as may be required by law; or

(3) The calendar year. [1959, ch. 299, § 10, p. 613; am. 1969, ch. 319, § 4, p. 982; am. 1997, ch. 57, § 1, p. 95.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is compiled as 26 U.S.C. § 1 et seq.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 578-588.

63-3011. Gross income. — The term “gross income” means gross income as defined in section 61(a) of the Internal Revenue Code. [I.C., § 63-3011, as added by 1995, ch. 111, § 2, p. 347.]

STATUTORY NOTES

Federal References. — Section 61(a) of the Internal Revenue Code is compiled as 26 U.S.C. § 61(a).

63-3011A. Adjusted gross income. — The term “adjusted gross income” means adjusted gross income as defined in section 62 of the Internal Revenue Code. [I.C., § 63-3011A, as added by 1995, ch. 111, § 3, p. 347.]

STATUTORY NOTES

Federal References. — Section 62 of the Internal Revenue Code is codified as 26 U.S.C.S. § 62.

63-3011B. Taxable income. — The term “taxable income” means federal taxable income as determined under the Internal Revenue Code. [I.C., § 63-3011B, as added by 1995, ch. 111, § 4, p. 347.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is codified as 26 U.S.C.S. § 1 et seq.

JUDICIAL DECISIONS

Distributions from IRAs.

Distributions from an IRA are includable as taxable income in the year of the distribution, and there is no provision in either the Idaho or the federal income tax code permitting such distributions to be deducted from income

in instances where the taxpayer had not been granted a deduction for the contributions to the IRA at the time they were made. *Idaho State Tax Comm'n v. Stang*, 135 Idaho 800, 25 P.3d 113 (2001).

63-3011C. Idaho taxable income. — The term “Idaho taxable income” means taxable income as modified pursuant to the Idaho adjustments specifically provided in this chapter. [I.C., § 63-3011C, as added by 1995, ch. 111, § 5, p. 347.]

JUDICIAL DECISIONS

Distribution from IRAs.

The distribution of the \$ 8,000 from the taxpayers' IRAs while they were residents of Idaho was taxable income under the Idaho income tax code, because, although they had paid income taxes to California on the sums that they contributed to their IRAs, Idaho law

does not provide a deduction, exemption, or tax credit in such situations, and any such deduction, exemption, or tax credit must come from the legislature, not from the judiciary. *Idaho State Tax Comm'n v. Stang*, 135 Idaho 800, 25 P.3d 113 (2001).

63-3012. Includes and including. — The terms “includes” and “including” when used in a definition contained in this act shall not be deemed to exclude other things otherwise within the meaning of the term defined. [1959, ch. 299, § 12, p. 613.]

STATUTORY NOTES

Compiler's Notes. — For words “this act”, see Compiler's Notes, § 63-3001.

JUDICIAL DECISIONS

Cited in: *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 442 P.2d 174 (1968).

63-3013. Resident. — (1) The term “resident,” for income tax purposes, means any individual who:

- (a) Is domiciled in the state of Idaho for the entire taxable year; or
- (b) Maintains a place of abode in this state for the entire taxable year and spends in the aggregate more than two hundred seventy (270) days of the taxable year in this state. Presence within the state for any part of a calendar day shall constitute a day spent in the state unless the individual can show that his presence in the state for that day was for a temporary or transitory purpose.

(2) An individual shall not be considered a resident, but may be considered a part-year resident, during a period of absence from this state described as follows:

- (a) The period begins with an individual leaving this state if the individual is absent from this state for at least four hundred forty-five (445) days in the first fifteen (15) months.
- (b) During such period, but excluding the first fifteen (15) months, the individual was not present in this state for more than sixty (60) days in any calendar year.
- (c) During such period, the individual did not maintain a permanent place of abode in this state at which his spouse (unless he and his spouse are legally separated) or minor or dependent children are present for more than sixty (60) days during any calendar year.
- (d) The individual did not, during such period, hold an elective or appointive office of the government of the United States (other than the armed forces of the United States or career appointees in the United States foreign service).
- (e) The individual was not, during such period, employed on the staff of an elective officer in the legislative branch of the government of the United States; and
- (f) The individual did not, during such period, claim Idaho as his tax home for federal income tax purposes.

(g) The period ends with an individual returning to this state if such individual remains or resides in the state for more than sixty (60) days.

(3) Any individual who is a nonresident alien as defined in section 7701 of the Internal Revenue Code is not a resident within the meaning of this

section. [1959, ch. 299, § 13, p. 613; am. 1961, ch. 328, § 2, p. 622; am. 1986, ch. 245, § 1, p. 664; am. 1995, ch. 83, § 1, p. 238; am. 1995, ch. 111, § 6, p. 347; am. 1996, ch. 40, § 1, p. 103; am. 1997, ch. 57, § 2, p. 95; am. 2006, ch. 90, § 1, p. 264.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 90, added subsection (3).

Federal References. — Section 7701 of the Internal Revenue Code, referred to in subsection (3), is codified as 26 U.S.C.S. § 7701.

Compiler's Notes. — The words in parentheses so appeared in the law as enacted.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961. See S.L. 1961, ch. 328, § 30 compiled as note to § 63-3077.

Section 2 of S.L. 2006, ch. 90 declared an emergency retroactively to January 1, 2006 and approved March 15, 2006.

JUDICIAL DECISIONS

Construction.

It is well settled that since an exemption exists only by virtue of constitutional or statutory provision, it must be created or con-

ferred in clear and plain language and cannot be by inference or implication. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 569.

63-3013A. Part-year resident. — The term “part-year resident,” for income tax purposes, means any individual who is not a resident and who:

(a) Has changed his domicile from Idaho or to Idaho during the taxable year; or

(b) Has resided in Idaho for more than one (1) day during the taxable year. An individual shall be deemed to reside within Idaho for any calendar day in which that individual has a place of abode in this state and is present in this state for more than a temporary or transitory purpose. Presence for any fraction of a calendar day shall be counted as a whole day. [I.C., § 63-3013A, as added by 1961, ch. 328, § 3, p. 622; am. 1965, ch. 316, § 2, p. 880; am. 1969, ch. 319, § 6, p. 982; am. 1970, ch. 222, § 3, p. 621; am. 1979, ch. 3, § 1, p. 6; am. 1986, ch. 90, § 1, p. 262; am. 1995, ch. 111, § 7, p. 347.]

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 570.

63-3014. Nonresident. — The term “nonresident” means any individual who is not a resident or part-year resident. [1959, ch. 299, § 14, p. 613; am. 1961, ch. 328, § 4, p. 622.]

STATUTORY NOTES

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961. See S.L. 1961, ch. 328, § 30 compiled as note to § 63-3077.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxes, §§ 574-577.

63-3015. Qualified funeral trusts. — (1) A resident of this state includes a trust whose trustee has elected treatment as a qualified funeral trust pursuant to section 685 of the Internal Revenue Code where, at the time of the initial funding of the trust, the trust is required to be established under the laws of this state, or in the absence of such a requirement, where a funeral home or cemetery located in this state is identified to provide the services or merchandise, or both, under the terms of a preneed contract requiring the establishment of the trust.

(2) Qualified funeral trusts having a single trustee may file a single, composite return pursuant to rules of the state tax commission. Each beneficiary's interest in a qualified funeral trust included in the composite return under this section shall be taxed as a separate trust for the purposes of application of the rate schedules in section 63-3024, Idaho Code, and determination of the filing requirement in section 63-3030, Idaho Code. The composite return shall not be a return of a person under section 63-3082, Idaho Code. [I.C., § 63-3015, as added by 2002, ch. 36, § 1, p. 82.]

STATUTORY NOTES

Prior Laws. — Former § 63-3015, which comprised, 1959, ch. 299, § 15, p. 613, was repealed by S.L. 1997, ch. 57, § 3, effective January 1, 1997.

Federal References. — Section 685 of the Internal Revenue Code, referred to in subsec-

tion (1), is codified as 26 U.S.C. § 684.

Effective Dates. — Section 2 of S.L. 2002, ch. 36 declared an emergency retroactively to January 1, 2002. Approved February 19, 2002.

63-3016. Paid or incurred and paid or accrued. — The terms “paid or incurred” and “paid or accrued” shall be defined as set forth in the Internal Revenue Code and shall be construed according to the method of accounting upon the basis of which the taxable income is computed. [1959, ch. 299, § 16, p. 613.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is codified as 26 U.S.C.S. § 1 et seq.

63-3017. Employer. — The term “employer” means “employer” as defined in the Internal Revenue Code. [1959, ch. 299, § 17, p. 613.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is codified as 26 U.S.C.S. § 1 et seq.

63-3018. Employee. — The term “employee” means “employee” as defined in the Internal Revenue Code. [1959, ch. 299, § 18, p. 613.]

STATUTORY NOTES

Federal References. — The Internal Revenue Code is codified as 26 U.S.C.S. § 1 et seq.

63-3019. Wages. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised, 1959, ch. 299, § 19, p. 613, was repealed by S.L. 1997, ch. 57, § 4, effective January 1, 1997.

63-3020. Farmer. — The term “farmer” means any person over two-thirds (2/3) of whose gross income is derived from farming. [1959, ch. 299, § 20, p. 613.]

63-3021. Net operating loss. — (a) The term “net operating loss” means the amount by which Idaho taxable income, after making the modifications specified in subsection (b) of this section, is less than zero.

(b) Add the following amounts:

(1) The amount of any net operating loss deduction included in Idaho taxable income.

(2) In the case of a taxpayer other than a corporation:

(i) Any amount deducted due to losses in excess of gains from sales or exchanges of capital assets; and

(ii) Any deduction for long-term capital gains provided by this chapter.

(3) Any deduction allowed under section 151 of the Internal Revenue Code (relating to personal exemption) or any deduction in lieu of any such deduction.

(4) Any deduction for the standard or itemized deductions provided for in section 63 of the Internal Revenue Code, or section 63-3022(j), Idaho Code, except for any deduction allowable under section 165(c)(3) of the Internal Revenue Code (relating to casualty losses) pertaining to property physically located inside Idaho at the time of the casualty. [I.C., § 63-3021, as added by ch. 27, § 2, p. 32; am. 1992, ch. 11, § 2, p. 17; am. 1995, ch. 111, § 8, p. 347; am. 1998, ch. 42, § 1, p. 175; am. 2000, ch. 38, § 3, p. 70.]

STATUTORY NOTES

Prior Laws. — Former § 63-3021, which comprised S.L. 1959, ch. 299, § 21, p. 613; am. 1963, ch. 339, § 2, p. 971, was repealed

by S.L. 1989, ch. 27, § 1.

Federal References. — Section 151 of the Internal Revenue Code, referred to in subsec-

tion (3), is codified as 26 U.S.C.S. § 151.

Section 63 of the Internal Revenue Code, referred to in subsection (4), is codified as 26 U.S.C.S. § 63.

Section 165(c)(3) of the Internal Revenue Code, referred to in subsection (4), is codified as 26 U.S.C.S. § 165(c)(3).

Compiler's Notes. — The words in parentheses so appeared in the law as enacted.

Effective Dates. — Section 3 of S.L. 1989, ch. 27 declared an emergency and provided

that the act should be effective retroactive to January 1, 1989. Approved March 20, 1989.

Section 6 of S.L. 1998, ch. 42 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 6 of S.L. 2000, ch. 38 declared an emergency retroactively to January 1, 2000 and approved March 22, 2000.

63-3022. Adjustments to taxable income. — The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022Q, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c)(1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in activities not taxable by Idaho may not be subtracted.

(d) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal

Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(f) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income.

(g) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(h) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income.

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(j) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

(1) The standard deduction as defined in section 63, Internal Revenue Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(m) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars (\$4,000) per tax year. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

(p) In the case of an individual, add the amount of a withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, transferred to a qualified tuition program, as defined in section 529 of the Internal Revenue Code, that is operated by a state other than Idaho. [1959, ch. 299, § 22, p. 613; am. 1961, ch. 328, § 5, p. 622; am. 1963, ch. 339, § 3, p. 971; am. 1965, ch. 316, § 3, p. 880; am. 1967, ch. 294, § 2, p. 828; am. 1969, ch. 319, § 7, p. 982; am. 1970, ch. 222, § 4, p. 621; am. 1971, ch. 64, § 1, p. 146; am. 1972, ch. 398, § 3, p. 1149; am. 1973, ch. 45, § 1, p. 80; am. 1975, ch. 33, § 1, p. 57; am. 1975, ch. 90, § 1, p. 184; am. 1976, ch. 271, § 1, p. 916; am. 1977, ch. 84, § 1, p. 170; am. 1978, ch. 139, § 1, p. 314; am. 1979, ch. 91, § 1, p. 218; am. 1980, ch. 2, § 1, p. 4; am. 1980, ch. 4, § 1, p. 7; am. 1980, ch. 90, § 1, p. 194; am. 1981, ch. 130, § 1, p. 217; am. 1981, ch. 201, § 2, p. 354; am. 1982, ch. 135, § 1, p. 383; am. 1983, ch. 161, § 1, p. 463; am. 1983, ch. 257, § 1, p. 680; am. 1983, ch. 258, § 1, p. 684; am. 1984, ch. 35, § 2, p. 55; am. 1986, ch. 90, § 2, p. 262; am. 1987, ch. 93, § 2, p. 176; am. 1987, ch. 149, § 1, p. 295; am. 1989, ch. 76, § 1, p. 134; am. 1989, ch. 181, § 1, p. 449; am. 1990, ch. 63, § 1, p. 138; am. 1990, ch. 223, § 1, p. 593; am. 1990, ch. 307, § 1, p. 844; am. 1990, ch. 326, § 8, p. 888; am. 1991, ch. 7, § 2, p. 18; am. 1991, ch. 55, § 2, p. 99; am. 1991, ch. 318, § 3, p. 824; am. 1992, ch. 11, § 3, p. 17; am. 1993, ch. 3, § 1, p. 5; am. 1993, ch. 284, § 2, p. 958; am. 1994, ch. 39, § 1, p. 57; am. 1994, ch. 186, § 1, p. 606; am. 1994, ch. 247, § 1, p. 777; am. 1995, ch. 83, § 2, p. 238; am. 1995, ch. 111, § 9, p. 347; am. 1995, ch. 362, § 3, p. 1265; am. 1996, ch. 340, § 2, p. 1141; am. 1997, ch. 57, § 5, p. 95; am. 1998, ch. 20, § 1, p. 119; am. 1998, ch. 42, § 2, p. 175; am. 1999, ch. 70, § 1, p. 191; am. 2000, ch. 38, § 4, p. 70; am. 2000, ch. 213, § 2, p. 573; am. 2001, ch. 46, § 1, p. 85; am. 2001, ch. 270, § 1, p. 977; am. 2002, ch. 33, § 1, p. 63; am. 2003, ch. 6, § 1, p. 11; am. 2003, ch. 10, § 1, p. 22; am. 2004, ch. 30, § 2, p. 53; am. 2005, ch. 14, § 2, p. 41; am. 2006, ch. 63, § 1, p. 193; am. 2007, ch. 190, § 1, p. 559.]

STATUTORY NOTES

Cross References. — Corporate franchise tax, § 63-3025A.

Corporate income tax, § 63-3025.

Individual's tax and tax on estates and trusts, § 63-3024.

Joint returns, § 63-3031.

Judicial review, § 63-3049.

Payment of tax, § 63-3034.

Penalties, §§ 63-3075, 63-3076.

Amendments. — This section was amended by two 1998 acts — ch. 20, § 1, effective January 1, 1998 and ch. 42, § 2, effective retroactively to January 1, 1998, which do not conflict and have been compiled together. However, the two acts deleted different subsections which has created a non-sequential designation scheme at the end of the section. The compiler has attempted to resolve this by letting stand the deletions of subsections (m) and (a) by ch. 20 and the deletions of subsections (a) and (a) by ch. 42 and bracketing subsections (n) and (o) as subsections [(m)] and [(n)], respectively.

The 1998 amendment, by ch. 20, § 1, deleted the former subdivision (l)(1)a. designation, in present subdivision (l)(1), deleted “plus contributions made to the state of Idaho for credit to the medical assistance account, if such contributions were not previously subtracted in arriving at taxable income, plus,” deleted former subdivision (l)(1)b., deleted the former subdivision (l)(2)a. designation, at the end of present subdivision (l)(2), deleted “plus,” deleted former subdivision (l)(2)b., deleted former subdivision (m), redesignated former subdivisions (n) through (p) as present subdivisions (m) through (o) and deleted former subdivision (q).

The 1998 amendment, by ch. 42, § 2, in the introductory paragraph, substituted “through 63-3022M” for “through 63-3022L,” deleted former subdivision (a), redesignated former subdivisions (b) through (d) as present subdivisions (a) through (c), in the last sentence of present subdivision (c)(1), substituted “subsection (c)” for “subsection (d),” in subdivision (c)(2), inserted “or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code,” redesignated former subdivisions (e) through (p) as present subdivisions (d) through (o), in present subdivision (j), inserted “unless the corporation was included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code,” and in the last sentence, substituted “subsection (c)” for “subsection (d),” and deleted former subdivision (q).

This section is amended by two 2000 acts — ch. 38, § 4 and ch. 213, § 2, both effective January 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 38, § 4, near

the beginning of subdivision (c)(1), substituted “January 1, 2000” for “January 1, 1999”; deleted former subsection (g), which read: “In the case of corporations and partnerships, add Idaho taxable income of nonresident officers, directors, shreholders, partners or members to the extent such income is attributed to the corporation or partnership in section 63-3022L, Idaho Code”; and redesignated former subsections (h) through (n) as present subsections (g) through (m).

The 2000 amendment, by ch. 213, § 2, added subsection (o) (now subsection (n)).

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 46, § 1, redesignated former subsection (o) as present subsection (n); in present subsection (n), added the second sentence; and added present subsection (o).

The 2001 amendment, by ch. 270, § 1, in subsection (a,) inserted “and local” following “Add any state”, inserted “as defined in section 164 of the Internal Revenue Code and” preceding “measured by net income”, inserted “or local” preceding “tax refunds used in arriving”, in subdivision (j)(2) substituted “or local taxes measured by net income and” for “income” following “section 63 of Internal Revenue Code except state”, substituted “defined” for “specified” preceding “in section 164 of the Internal Revenue Code”; in subsection (k) substituted “excluded from gross income for federal income tax purposes under the ten (10) year averaging method” for “deducted from gross income pursuant to section 402(d)(3) of the Internal Revenue Code”; redesignated former subsection (g) as present subdivisions (g)(1) and (g)(2) to read: “(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section. (2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter”; and redesignated former subsection (o) as present subsection (n).

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 6, § 1, added “less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to 26 U.S.C. section 529” following “Idaho Code” in subsection (o).

The 2003 amendment, by ch. 10, § 1, substituted “63-3022Q” for “63-3022M” preceding “Idaho Code” in the introductory paragraph.

The 2006 amendment, by ch. 63, deleted "and provided that appropriate adjustments shall be made in determining the deductions and exemptions allowed pursuant to section 63-3026A(4), Idaho Code" at the end of subsection (h).

The 2007 amendment, by ch. 190, added subsection (p).

Legislative Intent. — Section 2 of S.L. 1983, ch. 257 and § 2 of S.L. 1983, ch. 258 read: "It is not the intention of the legislature, by enacting this legislation, to limit the application of Idaho income tax regulation 27-4.1.a.ii."

Federal References. — The references to the Internal Revenue Code, appearing throughout this section, are codified throughout Title 26 of the United States Code.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

The title of ch. 149, S.L. 1987 stated "Relating to ... declaring an emergency and providing a retroactive effective date." However, § 3 of ch. 149, S.L. 1987 declared an emergency but did not provide for retroactivity of the act.

Effective Dates. — Section 2 of S.L. 1971, ch. 64 declared an emergency and provided that the act should be retroactive to January 1, 1971. Approved March 4, 1971.

Section 2 of S.L. 1973, ch. 45 declared an emergency and provided that the act should take effect retroactive to January 1, 1973. Approved February 26, 1973.

Section 2 of S.L. 1975, ch. 90 declared an emergency and provided that the act should take effect retroactive to January 1, 1975. Approved March 21, 1975.

Section 2 of S.L. 1976, ch. 271 declared an emergency and provided the act should be effective on and after approval retroactive to January 1, 1976. Approved March 31, 1976.

Section 2 of S.L. 1977, ch. 84 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977. Approved March 17, 1977.

Section 2 of S.L. 1978, ch. 139 declared an emergency and provided that the act should be in full force and effect on and after its approval retroactive to January 1, 1978. Approved March 17, 1978.

Section 2 of S.L. 1979, ch. 91 declared an emergency and made the act retroactive to January 1, 1978. Approved March 20, 1979.

Section 2 of S.L. 1979, ch. 320 declared an emergency and provided that the act should be in full force and effect on and after and retroactively to January 1, 1978.

Section 2 of S.L. 1980, ch. 2 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its

passage and approval, and retroactively to January 1, 1980."

Section 2 of S.L. 1980, ch. 4 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1979."

Section 2 of S.L. 1980, ch. 90 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1980."

Section 2 of Acts 1981, ch. 130 declared an emergency and provided that the act should be in full force and effect retroactive to October 1, 1980 and should first apply to taxable years beginning on and after October 1, 1980. Approved March 27, 1981.

Section 2 of S.L. 1982, ch. 135 read: "An emergency existing therefor, which emergency is hereby declared to exist, all subsections and paragraphs except paragraphs (1)(1)c. and (2)c. shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1982. An emergency existing therefor, which emergency is hereby declared to exist, paragraphs (1)(1)c. and (2)c. shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1981." Approved March 22, 1982.

Section 2 of S.L. 1983, ch. 161 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1983. Approved April 8, 1983.

Section 3 of S.L. 1983, ch. 257 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactively to tax years beginning on and after April 1, 1982. Approved April 20, 1983.

Section 3 of S.L. 1983, ch. 258 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1983. Approved April 20, 1983.

Section 2 of S.L. 1984, ch. 35 declared an emergency and made the act effective retroactively to January 1, 1984. Approved March 9, 1984.

Section 3 of S.L. 1987, ch. 149 read "An emergency existing therefor, which is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval." Approved March 27, 1987.

Section 2 of S.L. 1989, ch. 76 declared an emergency and provided that the act should be effective retroactive to January 1, 1989. Approved March 27, 1989.

Section 2 of S.L. 1990, ch. 63 declared an emergency. Approved March 20, 1990 and retroactive to January 1, 1990.

Section 2 of S.L. 1990, ch. 223 declared an emergency. Approved April 5, 1990 and retroactive to January 1, 1987.

Section 2 of S.L. 1990, ch. 307 declared an emergency. Approved April 5, 1990 and retroactive to January 1, 1990.

Section 5 of S.L. 1991, ch. 7 declared an emergency and provided that sections 1 and 2 would be in full force and effect on and after passage and approval retroactive to January 1, 1991. Approved February 12, 1991.

Section 5 of S.L. 1991, ch. 55 declared an emergency and provided that the act would be in full effect and force retroactive to January 1, 1991. Approved March 18, 1991.

Section 4 of S.L. 1991, ch. 318 declared an emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1991. Approved April 4, 1991.

Section 7 of S.L. 1993, ch. 284 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993; provided however, that by written election filed by a taxpayer with the state tax commission, Sections 1 through 3 of this act shall apply to such taxpayer for all tax years beginning prior to January 1, 1993, as to which the period of limitations for assessment and collection of tax has not expired." Approved March 31, 1993.

Section 6 of S.L. 1994, ch. 39, declared an emergency and provided that this act shall be in full force and effect on and after February 25, 1994, and retroactively to January 1, 1994. Approved February 25, 1994.

Section 7 of S.L. 1994, ch. 247 provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a written election provided in Section 7, Chapter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had not expired on the date the election was filed and had not expired on January 1, 1994."

Section 4 of S.L. 1995, ch. 362 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1995. Approved March 22, 1995.

Section 3 of S.L. 1998, ch. 20 declared an emergency and provided this act shall be in full force and effect on and after February 27, 1998, and retroactively to January 1, 1998. Approved February 27, 1998.

Section 6 of S.L. 1998, ch. 42 declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 3 of S.L. 1994, ch. 186, provided that subsections (r), (s), and (t) shall be null, void and of no force and effect on and after January 1, 1999. However, § 3 of S.L. 1995, ch. 362 deleted these subsections effective retroactively to January 1, 1995.

Section 6 of S.L. 2000, ch. 38 declared an emergency retroactively to January 1, 2000 and approved March 22, 2000.

Section 3 of S.L. 2000, ch. 213 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 2 of S.L. 2001, ch. 46 declared an emergency retroactively to January 1, 2001 and approved March 19, 2001.

Section 9 of S.L. 2001, ch. 270, provided "An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 7 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001; and Section 8 of this act shall be in full force and effect on and after its passage and approval."

Section 2 of S.L. 2002, ch. 33 declared an emergency retroactively to January 1, 2002. Approved February 19, 2002.

Section 2 of S.L. 2003, ch. 6 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

Section 7 of S.L. 2004, ch. 30 declared an emergency retroactively to January 1, 2004. Approved March 10, 2004.

Section 3 of S.L. 2005, ch. 14 declared an emergency retroactively to January 1, 2005, except to the extent that Section 1 [§ 63-3004] may apply to Public Law 109-001 for which purpose the effective date of this act shall be January 7, 2005 and approved February 18, 2005.

Section 2 of S.L. 2006, ch. 63 declared an emergency retroactively to January 1, 2005 and approved March 14, 2006.

JUDICIAL DECISIONS

ANALYSIS

Dividends.

Equitable recoupment.

ESOP and R & D Deductions.

Foreign corporation.
Income earned outside state.
Itemized deductions.
Misinterpretation of law.
Net operating losses.
Retroactive application of law.
Wages.

Dividends.

Dividends received by a taxpaying corporation from a domestic corporation whose income producing activities were for the most part outside the state were taxable by this state. *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 442 P.2d 174 (1968).

Equitable Recoupment.

Application of equitable recoupment was not appropriate where the tax commission applied the taxpayer's net operating losses (NOLs) in part to earlier tax years in order to recalculate the taxpayer's income tax for later tax years. The tax commission did not assert a tax on the NOLs, but merely applied the NOLs as the law required; therefore, there was not a "single transaction" that constituted the taxable event upon which the tax commission's claim for additional taxes was based, while at the same time being the basis of the taxpayer's claim for recoupment. *Harman's of Idaho, Inc. v. Idaho State Tax Comm'n*, 114 Idaho 740, 760 P.2d 1156 (1988).

ESOP and R & D Deductions.

Where corporations took a tax credit on federal income tax owed instead of a deduction against contributions made to employee stock ownership program (ESOP) and research and development expenses (R & D), there was no provision under this section which allowed corporations to then adjust their taxable income for purposes of calculating state income tax liability by deducting ESOP and R & D expenses. *Potlatch Corp. v. Idaho State Tax Comm'n*, 128 Idaho 387, 913 P.2d 1157 (1996).

Foreign Corporation.

The world-wide unitary income of a foreign subsidiary, which is not "taxable income" under 26 U.S.C.S. § 63, may not be combined with the unitary business income of a domestic corporation and its subsidiaries in order to compute the apportionable amount of "Idaho taxable income" for purposes of § 63-3027, unless the foreign source income is also included in the definition of taxable income under the provisions of this section. *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 114 Idaho 849, 820 P.2d 1206 (1991).

Income Earned Outside State.

In enacting the Idaho Income Tax Act, the legislative intent was to impose a tax on the residents of this state measured by taxable

income wherever derived, and no exemption is granted. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

Itemized Deductions.

An Idaho resident on his or her state income tax form can deduct from taxable income itemized deductions as defined by various sections of the Internal Revenue Code, including § 164, (26 U.S.C., § 164) regardless of whether they choose to do so on their federal returns. *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 693 P.2d 1056 (1984).

Misinterpretation of Law.

Where the tax commission has defended its case without foundation and unreasonably in misreading and misinterpreting §§ 63-3002 and 63-3022 to its advantage it can be assessed attorney's fees under § 12-121. *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 693 P.2d 1056 (1984).

Net Operating Losses.

The fact that a taxpayer chose to claim the entire amount of net operating losses (NOLs) as deductions for later tax years rather than applying them first to earlier tax years, as required, and the fact that the tax commission subsequently correctly applied the NOLs and asserted a deficiency in the taxes due for the later tax years, did not preclude the application of the limitation provided in subsection (d) of former § 63-3072. *Harman's of Idaho, Inc. v. Idaho State Tax Comm'n*, 114 Idaho 740, 760 P.2d 1156 (1988).

The fact that under this section the tax commission first carried the net operating losses back to earlier tax years before applying them to later tax years did not entitle the taxpayer to file amended returns for the earlier tax years and to treat the date of these amended returns as being the date for the beginning of a three-year statute of limitations under subsection (c) of former § 63-3072, where, by the time the tax commission issued the notice of deficiency, more than three years had passed since the filing of the returns of the earlier tax years. *Harman's of Idaho, Inc. v. Idaho State Tax Comm'n*, 114 Idaho 740, 760 P.2d 1156 (1988).

Retroactive Application of Law.

An income tax law may apply retroactively to recent transactions, including the receipt of income during the year of the legislative ses-

sion preceding that during which the income tax law was enacted. *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964).

Wages.

Wages received for labor or as compensation for services are income. *State v. Staples*, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

Cited in: North Idaho Jurisdiction of Epis-

copal Churches, Inc. v. Kootenai County, 94 Idaho 644, 496 P.2d 105 (1972); *Estate of Morrison v. Idaho State Tax Comm'n*, 98 Idaho 766, 572 P.2d 869 (1977); *Idaho State Tax Comm'n v. Payton*, 107 Idaho 258, 688 P.2d 1163 (1984); *State v. Gilbert*, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987); *State v. Ross*, 129 Idaho 380, 924 P.2d 1224 (1996); *AIA Servs. Corp. v. Idaho State Tax Comm'n*, 136 Idaho 184, 30 P.3d 962 (2001).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Depletion allowances.
Income of corporations.

Depletion Allowances.

The basis upon which depletion was allowed in respect to any property not specifically excepted from operation of the statute had to be governed by such statute; therefore, taxpayer was entitled to deduction from gross income for depletion on basis of cost or fair market value of calcium carbonate deposits depending on when such deposits were acquired, but was not entitled to deduction for depletion on basis of percentage of gross income. *Idaho Portland Cement Co. v. Neill*, 83 Idaho 66, 357 P.2d 654 (1960).

There was no conflict between the provi-

sions of the statute which provided basis of cost or fair market value upon which depletion was allowed with respect to any property, and the exceptions thereto. *Idaho Portland Cement Co. v. Neill*, 83 Idaho 66, 357 P.2d 654 (1960).

Income of Corporations.

The legislature intended the word "net" in Acts 1931 (E. S.), ch. 2, § 29, p. 2, to be used in the statute relating to corporations, and the computation of the deduction was upon the net income. *Texas Co. v. Neill*, 83 Idaho 242, 361 P.2d 42 (1961).

OPINIONS OF ATTORNEY GENERAL

Because of a lack of unity of subject and title, S.L. 1984, ch. 35, § 2, did not effectively repeal subdivision (a)(1) of this section as it failed to conform with Const., art. 3, § 16. OAG 84-10.

Because it was not in effect prior to January 1, 1995, the effective date of 1995 amendment to § 63-3004, the deduction for computing federal taxable income for health care costs incurred by self-employed individuals and provided by Pub. L. No 104-7, signed into law April 11, 1995, and retroactive to January 1, 1994, is not available to taxpayers on their 1994 Idaho income taxes. OAG 95-2, p. 3.

Law granting tax credit to a parent or guardian who complies with state's compulsory education law by means other than the public school system and without using public school resources by enrolling their child in a private non-sectarian school, a private sectarian school or through home schooling would probably be constitutional, for such tax credit can be claimed only by the parents and the fact that §§ 63-3029A and 63-3022, which provide more direct benefit to private schools have been accepted as constitutional. OAG 97-2.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 483-511.

A.L.R. — What educational expenses are deductible as expenses incurred in carrying on a trade or business within federal income tax statute (26 U.S.C. (1954 I.R.C.) § 162). 3 A.L.R.3d 829.

State tax on trust income as affected by foreign elements. 5 A.L.R.3d 606.

Initiation and termination of "holding period" in determining whether gain or loss on

sale of stock or securities is entitled to capital gains or loss treatment. 7 A.L.R.3d 382.

Consideration of tax liability or consequences in determining alimony or property settlement provisions. 51 A.L.R.3d 461; 9 A.L.R.5th 568.

Distributions to employee from pension or profit sharing plans as taxable, under § 402 of the 1954 Internal Revenue Code [26 U.S.C. § 402], as ordinary income or capital gain. 3 A.L.R. Fed. 719.

Construction and application of § 1034 of Internal Revenue Code of 1954 (26 U.S.C. § 1034) concerning nonrecognition of gain on sale or exchange of residential property. 5 A.L.R. Fed. 205.

What kinds of legal costs incurred by taxpayer are deductible — current cases. 39 A.L.R. Fed. 221.

63-3022A. Deduction of certain retirement benefits. — (a) An amount specified by subsection (b) of this section of the following retirement benefits may be deducted by an individual from taxable income if such individual has either attained age sixty-five (65) years, or has attained age sixty-two (62) years and is classified as disabled:

- (1) Retirement annuities paid by the United States of America to a retired civil service employee or the unremarried widow of a retired civil service employee.
- (2) Retirement benefits paid from the firemen's retirement fund of the state of Idaho to a retired fireman or the unremarried widow of a retired fireman.
- (3) Retirement benefits paid from the policemen's retirement fund of a city within this state to a retired policeman or the unremarried widow of a retired policeman.
- (4) Retirement benefits paid by the United States of America to a retired member of the military services of the United States or the unremarried widow of such member.

(b) The amount of retirement benefits that may be deducted from taxable income shall be an amount not in excess of maximum retirement benefits under the social security act, as amended, on the date on which this act is passed and approved, including adjustments to be made based upon consumer price index adjustments provided in section 215 of the social security act. The state tax commission shall ascertain benefit changes made in accordance with the social security act and publish the appropriate deduction amounts provided by this section reflecting such changes annually. Maximum retirement benefits under the social security act shall mean:

- (1) In the case of a taxpayer who files a joint return with his spouse for the tax year, an amount equal to the maximum social security benefits payable for the tax year to a person attaining full retirement age in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits, and whose spouse has no social security benefits except those payable on his record of earnings.
- (2) In the case of a taxpayer who is not married, an amount equal to maximum social security benefits payable for the tax year to a person attaining full retirement age in the tax year who has earned the maximum earnings creditable under social security for the years used in the computation of his benefits.
- (3) In the case of an unremarried widow, an amount equal to the maximum social security benefits payable for the tax year to a widow attaining full retirement age in the tax year who has no social security benefits except those to which she is entitled on her deceased husband's record and whose husband had received no reduced retirement benefits

prior to his death and whose husband had earned the maximum earnings creditable under social security for the years used in the computation of his benefits under social security.

(4) Maximum retirement benefits shall, in every case, take into consideration and be adjusted to reflect adjustments that would be made to such amounts had they been received as social security benefits as the result of the receipt of earnings in excess of earnings limitations. The terms in this paragraph are those defined in the social security act.

(5) Taxpayers not described in paragraphs (1), (2), (3) and (4) of this subsection may not deduct any amount of retirement benefits under this section.

(c) The total deduction under this section may not exceed the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income in the tax year. If the taxpayer or the taxpayer's spouse receives retirement benefits under the federal railroad retirement act or the federal social security act in the tax year, then the amount of any retirement annuities computed under subsection (b) of this section shall be reduced by the amount of such federal railroad retirement act and federal social security act retirement benefits received by either the taxpayer or the taxpayer's spouse, and the lesser of the amount so computed or the total amount of retirement benefits or annuities which are described in subsection (a) of this section and which are included in the taxpayer's gross income shall constitute the allowable deduction. Furthermore, the allowable deduction as calculated under this section may be subject to additional limitations under section 63-3026A(6), Idaho Code, and the rules promulgated thereunder.

(d) As used in this section, the word "widow" shall include a widower.

(e) As used in this section, the word "disabled" shall mean an individual who is a disabled person described in section 63-701, Idaho Code. [I.C., § 63-3022A, as added by 1973, ch. 278, § 2, p. 591; am. 1976, ch. 94, § 1, p. 312; am. 1979, ch. 86, § 3, p. 208; am. 1997, ch. 58, § 1, p. 107; am. 2000, ch. 26, § 3, p. 45; am. 2004, ch. 30, § 3, p. 53.]

STATUTORY NOTES

Federal References. — Section 215 of the Social Security Act, referred to in subsection (b) of this section, is compiled as 42 U.S.C., § 415.

Compiler's Notes. — The words "on the date on which the act is passed and approved" in subsection (b) refer to March 16, 1973, the approval date of S.L. 1973, Chapter 278.

Section 1 of S.L. 1979, ch. 143 read, "A contribution to an individual retirement account, established pursuant to the Internal Revenue Code, which is made on or before the due date (including extensions) of an individual's Idaho income tax return for any tax year commencing during 1978 only may be taken as a deduction on the taxpayer's 1978 return in the same manner and to the same extent as

it is deductible on his federal return for the same period."

Effective Dates. — Section 3 of S.L. 1973, ch. 278 declared an emergency and provided that the act should take effect retroactive to January 1, 1973. Approved March 16, 1973.

Section 2 of S.L. 1976, ch. 94, declared an emergency and provided that the act should take effect on and after approval retroactive to January 1, 1976. Approved March 11, 1976.

Section 4 of S.L. 1979, ch. 86 declared an emergency and made the act effective retroactive to January 1, 1979. Approved March 20, 1979.

Section 2 of S.L. 1979, ch. 143 declared an emergency and provided that the act should be in full force and effect on and after and

retroactively to January 1, 1979. Approved March 27, 1979.

Section 2 of S.L. 1997, ch. 58 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1997. Approved March 13, 1997.

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

Section 7 of S.L. 2004, ch. 30 declared an emergency retroactively to January 1, 2004. Approved March 10, 2004.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 508.

63-3022B. Deduction for insulation of residences. — For taxable years commencing on and after January 1, 1976, an individual taxpayer may deduct from taxable income an amount actually paid or accrued by the individual taxpayer during the taxable year for the actual installation, but not replacement, of insulation within any existing building in the state of Idaho which serves as a place of residence of the individual taxpayer. As used in this section, "insulation" means any material commonly used in the building industry and actually installed for the purpose of retarding the passage of heat energy into or out of a building, including but not limited to, such items as fiberglass insulation, weather stripping, double pane windows, and storm doors and windows. As used in this section, "existing building" means any building in being, under construction, or subject to an outstanding legal building permit on the effective date of this act. [I.C., § 63-3022B, as added by 1976, ch. 212, § 2, p. 773; am. 1995, ch. 111, § 10, p. 347.]

STATUTORY NOTES

Legislative Intent.*— Section 1 of S.L. 1976, ch. 212, read: "It is declared to be the policy of the state of Idaho that the installation of energy-saving insulation materials in existing structures and the use of alternative energy devices, including solar and geothermal heating or cooling systems, should be encouraged as conserving nonrenewable resources, reducing environmental pollution and promoting the health and well-being of the people of this state, and should be valued in relation to these benefits to the people of the state of Idaho. That while the

federal and state tax structures allow investments for insulation and alternative energy devices in income-producing property to be amortized or otherwise favorably treated, a need exists to encourage similar investments in nonincome-producing residential property."

Compiler's Notes. — The words "on the effective date of this act" refer to the effective date of S.L. 1976, Chapter 212, which was approved by the governor on March 19, 1978, retroactive to January 1, 1976.

63-3022C. Deduction for alternative energy device at residence.
— (1) An individual taxpayer who installs an alternative energy device to serve a place of residence of the individual taxpayer in the state of Idaho may deduct from taxable income the following amounts actually paid or accrued by the individual taxpayer: forty percent (40%) of the amount that is properly attributable to the construction, reconstruction, remodeling, installation or acquisition of the alternative energy device in the year when such device is completed or acquired and is placed in service by the taxpayer; and twenty percent (20%) per year thereafter for a period of three

(3) succeeding years; provided, however, that said deduction shall not exceed five thousand dollars (\$5,000) in any one (1) taxable year.

(2) An individual taxpayer who purchases a residence in the state of Idaho served by an alternative energy device for which none or less than all of the total deduction allowable under this section has been taken, may take the deduction specified in this section, or the unused balance of the deduction.

(3) As used in this section, "alternative energy device" means any system or mechanism or series of mechanisms using solar radiation, wind or geothermal resource as defined in section 42-4002, Idaho Code, primarily to provide heating, to provide cooling, to produce electrical power, or any combination thereof. Alternative energy device includes a fluid to air heat pump operating on a fluid reservoir heated by solar radiation or geothermal resource. Alternative energy device shall also include either a natural gas heating unit, or a propane heating unit, or a wood burning stove which meets the most current environmental protection agency certification, or a pellet stove which meets the most current industry and state standards, and which natural gas heating unit, or propane heating unit, or wood burning stove which meets the most current environmental protection agency certification, or pellet stove which meets the most current industry and state standards is used to replace during the same tax year a wood burning stove designed for residential heating and that does not meet environmental protection agency requirements for certification, provided the wood burning stove is surrendered to the department of environmental quality or its agent for destruction in accordance with applicable federal and state rules. [I.C., § 63-3022C, as added by 1976, ch. 212, § 3, p. 773; am. 1994, ch. 355, § 1, p. 1114; am. 1995, ch. 91, § 1, p. 261; am. 1995, ch. 111, § 11, p. 347; am. 2001, ch. 103, § 97, p. 253; am. 2001, ch. 270, § 2, p. 977.]

STATUTORY NOTES

Amendments. — This section was amended by two 1995 acts — ch. 91, § 1, effective retroactively to January 1, 1995, and ch. 111, § 11, effective January 1, 1996 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 91, § 1, in subsection (3), in the third sentence, deleted "An" at the beginning of the sentence, deleted subdivision designations "(i)" preceding "a natural gas" and "(ii)" preceding "a wood burning", following "a natural gas" inserted "heating unit", preceding "propane heating" inserted "a", following "propane heating unit" substituted "," for ";", preceding "or wood burning" inserted "stove which meets the most current environmental standards", preceding "pellet stove" inserted "a", preceding "or pellet stove which" substituted "industry and state standards" for "environmental protection agency certification", and following "and which" inserted "natural gas heating unit, or propane heating unit, or wood burn-

ing stove which meets the most current environmental protection agency certification, or pellet stove which meets the most current industry and state standards".

The 1995 amendment, by ch. 111, § 11, in subsection (1), following "taxable income" deleted "as defined in section 63 of the Internal Revenue Code".

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 103, § 97, in the second sentence of subsection (3), substituted "department of environmental quality" for "division of environmental quality" following "burning stove is surrendered to the" and deleted "of the department of health and welfare" preceding "or its agent."

The 2001 amendment, by ch. 270, § 2, in the second sentence of subsection (3), substituted "department of environmental quality" for "division of environmental quality" following "surrendered to the" and near the end of

subsection (3) deleted "of the department of health and welfare" preceding "or its agent."

Effective Dates. — Section 4 of S.L. 1976, ch. 212 declared an emergency and provided the act should be effective on and after approval retroactive to January 1, 1976. Approved March 19, 1976.

Section 2 of S.L. 1994, ch. 355 provided this act shall be in full force and effect on and after January 1, 1995.

Section 2 of S.L. 1995, ch. 91, declared an emergency and provided that this act shall be

in full force and effect on and after March 13, 1995, and retroactively to January 1, 1995. Approved March 13, 1995.

Section 9 of S.L. 2001, ch. 270 provided "An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 7 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001; and Section 8 of this act shall be in full force and effect on and after its passage and approval.

63-3022D. Deduction of expenses for household and dependent care services. — Allowance of Deduction. In the case of an individual who maintains a household which includes as a member one (1) or more qualifying individuals (as defined in section 21(b)(1), Internal Revenue Code), there shall be allowed as a deduction the employment-related expenses (as defined in section 21(b)(2), Internal Revenue Code, and as further specified and limited by section 21(c), (d), and (e), Internal Revenue Code) paid by such individual during the taxable year. [I.C., § 63-3022D, as added by 1977, ch. 83, § 1, p. 169; am. 1989, ch. 181, § 2, p. 449; am. 2004, ch. 30, § 4, p. 53.]

STATUTORY NOTES

Federal References. — Section 21 of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. § 21.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1977,

ch. 83 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977. Approved March 17, 1977.

Section 7 of S.L. 2004, ch. 30 declared an emergency retroactively to January 1, 2004. Approved March 10, 2004.

63-3022E. Household deduction for dependents sixty-five years of age or older or persons with developmental disabilities. — (1) An additional deduction from taxable income shall be allowed in the case of an individual who maintains a household, which includes as an immediate member of the family residing in that household, one (1) or more individuals sixty-five (65) years of age or older, or a person with developmental disabilities as defined in subsection (5) of section 66-402, Idaho Code, regardless of the age of the person when such developmental disability appeared, each of whom receives more than one-half (1/2) of his or her support for the year from the individual who maintains the household. The amount of the deduction shall be one thousand dollars (\$1,000) for each individual sixty-five (65) years of age or older or with developmental disabilities.

(2) There shall not be allowed more than three (3) deductions of one thousand dollars (\$1,000) under the provisions of this section on any one (1) return.

(3) No deductions shall be allowed under this section for the person(s) in whose name(s) the income tax return is filed except as set forth in subsection (4) of this section.

(4) A deduction of one thousand dollars (\$1,000) shall be allowed under this section for a person with a developmental disability, as defined in subsection (5) of section 66-402, Idaho Code, who is filing his own return. [I.C., § 63-3022E, as added by 1981, ch. 201, § 3, p. 354; am. 1984, ch. 176, § 1, p. 422; am. 1994, ch. 104, § 1, p. 232; am. 1995, ch. 111, § 12, p. 347; am. 1999, ch. 293, § 6, p. 732.]

STATUTORY NOTES

Compiler's Notes. — The letters enclosed in parentheses in subsection (3) so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1984, ch. 176 declared an emergency and made the act effective retroactively to January 1, 1984. Approved April 2, 1984.

Section 3 of S.L. 1994, ch. 104, declared an emergency and provided this act shall be in full force and effect on and after March 16, 1994, and retroactively to January 1, 1994. Approved March 16, 1994.

63-3022F. Computation of tax where taxpayer restores substantial amount held under the claim of right. — In the case of a taxpayer who is entitled to a reduction in federal tax due to the restoration of an item of gross income under section 1341 of the Internal Revenue Code (relating to the computation of tax where the taxpayer restores a substantial amount held under claim of right), there shall be allowed a deduction in determining Idaho taxable income as provided in section 1341(a)(4) of the Internal Revenue Code, if not otherwise deducted by the taxpayer for Idaho income tax purposes. In computing the deduction allowable under this section, no deduction shall be allowed if the item of gross income for a prior taxable year was not included in Idaho taxable income. [I.C., § 63-3022F, as added by 2005, ch. 16, § 1, p. 47.]

STATUTORY NOTES

Prior Laws. — Former § 63-3022F, which comprised I.C., § 63-3022F, as added by 1984, ch. 122, § 2, p. 279; am. 1995, ch. 111, § 13, p. 347, was repealed by S.L. 1998, ch. 20, § 2, effective retroactively to January 1, 1998.

Federal References. — Section 1341 of

the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 1341.

Effective Dates. — Section 2 of S.L. 2005, ch. 16, declared an emergency. Approved February 18, 2005.

63-3022G. Moneys paid to Japanese-Americans for reparations for World War II displacement. — (1) Amounts paid to eligible individuals shall not be included as Idaho taxable income if the payment was made from the United States civil liberties public education fund which is created by public law 100-383 (102 Stat. 905).

(2) As used in this section, the term "eligible individual" means any living individual of Japanese ancestry who, during the evacuation, relocation and internment period was a United States citizen or a permanent resident alien, and who was confined, held in custody, relocated or otherwise deprived of liberty or property as a result of:

(a) Executive order number 9066 dated February 19, 1942;

(b) The act entitled "An act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving or

committing any act in military areas or zones" approved March 21, 1942 (56 Stat. 173); or

(c) Any other executive order, presidential proclamation, law of the United States, directive of the armed forces of the United States or other action made by or on behalf of the United States or its agents, representatives, officers or employees respecting the evacuation, relocation or internment of individuals solely on the basis of Japanese ancestry.

(3) As used in this section, the term "evacuation, relocation and internment period" means that period beginning on December 7, 1941, and ending on June 30, 1946.

(4) As used in this section the term "permanent resident alien" means an alien lawfully admitted into the United States for permanent residence. [I.C., § 63-3022G, as added by 1989, ch. 246, § 1, p. 595; am. 1995, ch. 111, § 14, p. 347.]

STATUTORY NOTES

Prior Laws. — Former § 63-3022G, which comprised I.C., § 63-3022G, as added by 1986, ch. 336, § 1, p. 824, was repealed by S.L. 1987, ch. 290, § 1, effective January 1, 1987.

Federal References. — Public Law 100-383 (102 Stat. 905), referred to in subsection (1) of this section, is compiled as 50 App. U.S.C., § 1989 et seq.

56 Stat. 173, referred to in subdivision (2)(b), was repealed.

Effective Dates. — Section 2 of S.L. 1989, ch. 246 declared an emergency and provided that the act would become effective retroactively to January 1, 1988. Approved March 29, 1989.

63-3022H. Deduction of capital gains. — (1) If an individual taxpayer reports capital gain net income in determining taxable income, eighty percent (80%) in taxable year 2001 and sixty percent (60%) in taxable years thereafter of the capital gain net income from the sale or exchange of qualified property shall be a deduction in determining Idaho taxable income.

(2) The deduction provided in this section is limited to the amount of the capital gain net income from all property included in taxable income. Gains treated as ordinary income by the Internal Revenue Code do not qualify for the deduction allowed in this section. The deduction otherwise allowable under this section shall be reduced by the amount of any federal capital gains deduction relating to such property, but not below zero.

(3) As used in this section "qualified property" means the following property having an Idaho situs at the time of sale:

- (a) Real property held at least twelve (12) months;
- (b) Tangible personal property used in Idaho for at least twelve (12) months by a revenue-producing enterprise;
- (c) Cattle or horses held for breeding, draft, dairy or sporting purposes for at least twenty-four (24) months if more than one-half (1/2) of the taxpayer's gross income (as defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;
- (d) Breeding livestock other than cattle or horses held at least twelve (12) months if more than one-half (1/2) of the taxpayer's gross income (as

defined in section 61(a) of the Internal Revenue Code) for the taxable year is from farming or ranching operations in Idaho;

(e) Timber grown in Idaho and held at least twenty-four (24) months;

(f) In determining the period for which property subject to this section has been held by a taxpayer, the provisions of section 1223 of the Internal Revenue Code shall apply, except that the holding period shall not include the holding period of property given up in an exchange, when such property would not have constituted qualified property under this section without regard to meeting the holding period.

(4) If an individual reports a capital gain from qualified property from an S corporation or a partnership, a deduction shall be allowed under this section only to the extent the individual held his interest in the income of the S corporation or the partnership for the time required by subsection (3) of this section for the property sold.

(5) If an individual reports a capital gain from an estate or a capital gain from property acquired as a beneficiary of an estate, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the decedent, the estate, or the beneficiary, or a combination thereof.

(6) If an individual reports a capital gain from a trust or a capital gain from property acquired as a beneficiary of a trust, no deduction shall be allowed under this section unless the holding period required in subsection (3) of this section was satisfied by the grantor, the trust, or the beneficiary, or a combination thereof.

(7) As used in this section "revenue-producing enterprise" means:

(a) The production, assembly, fabrication, manufacture, or processing of any agricultural, mineral or manufactured product;

(b) The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining or manufacturing;

(c) The feeding of livestock at a feedlot;

(d) The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing.

[I.C., § 63-3022H, as added by 1987, ch. 324, § 1, p. 680; am. 1994, ch. 39, § 2, p. 57; am. 1995, ch. 83, § 3, p. 238; am. 1995, ch. 111, § 15, p. 347; am. 1996, ch. 41, § 2, p. 111; am. 1997, ch. 56, § 1, p. 93; am. 1998, ch. 414, § 1, p. 1306; am. 2001, ch. 321, § 1, p. 1135; am. 2001, ch. 323, § 1, p. 1138; am. 2002, ch. 35, § 2, p. 66; am. 2005, ch. 208, § 1, p. 624.]

STATUTORY NOTES

Amendments. — This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 321, § 1, in subsection (1), deleted "net" following "amount of the"; inserted "net income" following "capital gain"; substituted "Grains" for "Net capital"; in subsection (f) deleted "when" following "except that"; substituted "shall not include" for "includes any period during which the taxpayer held property other than the

property sold, all property held during"; substituted "of property given up in an exchange, when such property would not have constituted qualified property" for "must qualify"; added "without regard to meeting the holding period" following "under this section"; in subsection (5), inserted "or a capital gain from property acquired as a beneficiary of an estate" following "an estate"; in subsection (6), inserted "or a capital gain from property acquired as a beneficiary of a trust" following

"from a trust"; and made stylistic changes.

The 2001 amendment, by ch. 323, § 1, in subsection (1), substituted "eighty percent (80%) in taxable year 2001 and sixty (60%) in taxable years thereafter of the net capital gain" for "sixty percent (60%) of the net capital gain from the sale or exchange."

Federal References. — Section 61(a) of the Internal Revenue Code, referred to in subsection (3)(c) and (d), is codified as 26 U.S.C.S. § 61(a).

Section 1223 of the Internal Revenue Code, referred to in subsection (3)(f) of this section, is compiled as 26 U.S.C. § 1223.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1987, ch. 324 declared an emergency and provided that the act should be in full force and effect on and after its approval, retroactive to January 1, 1987. Approved April 6, 1987.

Section 6 of S.L. 1994, ch. 39, declared an emergency and provided that this act shall be in full force and effect on and after February 25, 1994, and retroactively to January 1,

1994. Approved February 25, 1994.

Section 3 of S.L. 1996, ch. 41 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to January 1, 1996. Approved February 23, 1996.

Section 2 of S.L. 1997, ch. 56 declared an emergency and provided that the act would be in full force and effect on and after its passage and approval, retroactive to January 1, 1997. Approved March 13, 1997.

Section 2 of S.L. 1998, ch. 414 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 27, 1998.

Section 2 of S.L. 2001, ch. 321 declared an emergency retroactively to January 1, 2001 and approved April 3, 2001.

Section 2 of S.L. 2001, ch. 323 declared an emergency retroactively to January 1, 2001 and approved April 4, 2001.

Section 2 of S.L. 2005, ch. 208 declared an emergency retroactively to January 1, 2005. Approved March 30, 2005.

63-3022I. Adoption expenses. — For taxable years commencing on or after January 1, 1994, legal fees and costs and medical expenses and costs all related to the adoption of a child may be deducted from taxable income by adoptive parents. The deduction allowed pursuant to this section shall not exceed three thousand dollars (\$3,000) for the legal fees and costs and medical expenses and costs incurred in the adoption, or the actual costs of the legal fees and costs and medical expenses and costs incurred in the adoption, whichever amount is less, which amount may not include travel costs. [I.C., § 63-3022I, as added by 1994, ch. 354, § 1, p. 1114.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1994, ch. 354, declared an emergency and provided this act shall be in full force and effect on and

after April 7, 1994, and retroactively to January 1, 1994. Approved April 7, 1994.

63-3022J. Deduction of value for technological equipment. —

(1) For taxable years commencing on and after January 1, 1985, any individual or corporation may deduct from taxable income an amount equal to the fair market value of technological equipment donated to public elementary or public secondary schools, public universities, private universities, public colleges, private colleges, public community colleges, private community colleges, public technical colleges or private technical colleges, or public libraries and library districts located within the state of Idaho, except that the amount of the deduction shall not reduce Idaho taxable income to less than zero. The deduction allowed pursuant to this section shall be in addition to any other deduction allowed pursuant to this chapter. In order to take the deduction pursuant to this section, the taxpayer shall

receive a written statement from the donee in which the donee agrees to accept the technological equipment donated.

(2) For the purposes of this section, "technological equipment" means a computer, computer software, scientific equipment or apparatus to be used by the university, college, community college, technical college, school or library directly or indirectly in the education program of the university, college, community college, technical college, school or library and which is donated to the university, college, community college, technical college, school or library no later than five (5) years after its manufacture has been substantially completed.

(3) For the purposes of this section, a public elementary or public secondary school means one that is located within this state and receives funding pursuant to chapter 10, title 33, Idaho Code.

(4) For the purposes of this section, a public library or library district means one that is located within this state and receives funding pursuant to chapters 26 and 27, title 33, Idaho Code.

(5) For purposes of this section, a public university, public college, public community college or public technical college means one that is located within this state and receives an appropriation from the legislature.

(6) For purposes of this section, a private university, private college, private community college or private technical college means one that is located within this state and is operated on a nonprofit basis.

(7) The state tax commission shall promulgate rules to administer the provisions of this section. The rules shall be promulgated in compliance with chapter 52, title 67, Idaho Code. [I.C., § 63-3022J, as added by 1995, ch. 111, § 16, p. 347; am. 1996, ch. 40, § 2, p. 103; am. 2002, ch. 35, § 3, p. 66.]

STATUTORY NOTES

Compiler's Notes. — Two 1995 acts — ch. 111, § 16, effective January 1, 1996, and ch. 362, § 2, effective retroactively to January 1, 1995 — created new sections designated § 63-3022J. Section 63-3022J, as enacted by ch. 111, § 16, was compiled as § 63-3022J, while § 63-3022J as enacted by S.L. 1995, ch. 362, § 1 was temporarily designated § [63-3022K] 63-3022J by the compiler. Subse-

quently § 63-3022J as enacted by S.L. 1995, ch. 362, § 1 was amended and permanently redesignated as § 63-3022K by S.L. 1996, ch. 60, § 1.

Effective Dates. — Section 6 of S.L. 1996, ch. 40 declared an emergency and provided that the act would be in full force and effect on and after passage and approval retroactive to January 1, 1996.

63-3022K. Medical savings account. — (1) For taxable years commencing on and after January 1, 1995, annual contributions to a medical savings account not exceeding two thousand dollars (\$2,000) for the account holder and interest earned on a medical savings account shall be deducted from taxable income by the account holder, if such amount has not been previously deducted or excluded in arriving at taxable income. For married individuals the maximum deduction shall be computed separately for each individual. Contributions to the account shall not exceed the amount deductible under this section.

(2) For the purpose of this section, the following terms have the following meanings unless the context clearly denotes otherwise:

- (a) "Account holder" means an individual, in the case of married individuals each spouse, including a self-employed person, on whose behalf the medical savings account is established.
- (b) "Dependent" means a person for whom a deduction is permitted under section 151(b) or (c) of the Internal Revenue Code if a deduction for the person is claimed for that person on the account holder's Idaho income tax return.
- (c) "Dependent child" means a child or grandchild of the account holder who is not a dependent if the account holder actually pays the eligible medical expenses of the child or grandchild and the child or grandchild is any of the following:
- (i) Under twenty-one (21) years of age, or enrolled as a full-time student at an accredited college or university.
 - (ii) Legally entitled to the provision of proper or necessary subsistence, education, medical care or other care necessary for his or her health, guidance or well-being and not otherwise emancipated, self-supporting, married or a member of the armed forces of the United States.
 - (iii) Mentally or physically incapacitated to the extent that he or she is not self-sufficient.
- (d) "Depository" means a state or national bank, savings and loan association, credit union or trust company authorized to act as a fiduciary or an insurance administrator or insurance company authorized to do business in this state, a broker or investment advisor regulated by the department of finance, a broker or insurance agent regulated by the department of insurance or a health maintenance organization, fraternal benefit society, hospital and professional service corporation as defined in section 41-3403, Idaho Code, or nonprofit mutual insurer regulated under title 41, Idaho Code.
- (e) "Eligible medical expense" means an expense paid by the taxpayer for medical care described in section 213(d) of the Internal Revenue Code, and long-term care expenses of the account holder and the spouse, dependents and dependent children of the account holder.
- (f) "Long-term care expenses" means expenses incurred in providing custodial care in a nursing facility as defined in section 39-1301, Idaho Code, and for insurance premiums relating to long-term care insurance under chapter 46, title 41, Idaho Code.
- (g) "Medical savings account" means an account established with a depository to pay the eligible medical expenses of the account holder and the dependents and dependent children of the account holder. Medical savings accounts shall carry the name of the account holder, a designated beneficiary or beneficiaries of the account holder and shall be designated by the depository as a "medical savings account."
- (3) Upon agreement between an employer and employee, an employer may establish and contribute to the employee's medical savings account or contribute to an employee's existing medical savings account. The total combined annual contributions by an employer and the account holder shall not exceed two thousand dollars (\$2,000) for the account holder. Employer contributions to an employee's medical savings account shall be owned by the employee.

(4) Funds held in a medical savings account may be withdrawn by the account holder at any time. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the tax imposed in this chapter. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the depository or the employer of the account holder. Other withdrawals shall be subject to the following restrictions and penalties:

(a) There shall be a distribution penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses. The penalty shall be ten percent (10%) of the amount of withdrawal from the account and, in addition, the amount withdrawn shall be subject to the tax imposed in this chapter. The direct transfer of funds from a medical savings account to a medical savings account at a different depository shall not be considered a withdrawal for purposes of this section. Charges relating to the administration and maintenance of the account by the depository are not withdrawals for purposes of this section.

(b) After an account holder reaches fifty-nine and one-half (59 1/2) years of age, withdrawals may be made for eligible medical expenses or for any other reason without penalty, but subject to the tax imposed by this section.

(c) Upon the death of an account holder, the account principal, as well as any interest accumulated thereon, shall be distributed without penalty to the designated beneficiary or beneficiaries.

(d) Funds withdrawn which are later reimbursed shall be taxable unless redeposited into the account within sixty (60) days of the reimbursement. Deposits of reimbursed eligible medical expenses shall not be included in calculating the amount deductible.

(e) Funds deposited in a medical savings account which are deposited in error or unintentionally and which are withdrawn within thirty (30) days of being deposited shall be treated as if the amounts had not been deposited in the medical savings account. Funds withdrawn from a medical savings account which are withdrawn in error or unintentionally and which are redeposited within thirty (30) days of being withdrawn shall be treated as if the amounts had not been withdrawn from the medical savings account.

(f) Funds withdrawn which are, not later than the sixtieth day after the day of the withdrawal, deposited into another medical savings account for the benefit of the same account holder are not a withdrawal for purposes of this section and shall not be included in calculating the amount deductible.

(5) Reporting. Depositories, in the case of medical savings accounts, shall provide to the state tax commission, in the routine fashion used for all interest-bearing accounts, the same information that is provided for any interest-bearing bank account. So as to minimize the burden of reporting, the information shall be provided in the format in which information is provided for any interest-bearing bank account to the state tax commission. There shall be no other reporting requirements. Account holders shall

provide on any state income tax form in which they take a deduction for a medical savings account the account number of their medical savings account and the depository at which the account is held.

(6) Any medical care savings account established pursuant to chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, may be continued pursuant to the provisions of this section and all duties, privileges and liabilities imposed in this section upon account holders of medical care savings accounts and the beneficiaries of those accounts shall apply to account holders of medical care savings accounts and their beneficiaries established pursuant to chapter 53, title 41, Idaho Code, as enacted by chapter 186, laws of 1994, as if the medical care savings account were a medical savings account established pursuant to this section.

(7)(a) If the account holder's surviving spouse acquires the account holder's interest in a medical savings account by reason of being the designated beneficiary of such account at the death of the account holder, the medical savings account shall be treated as if the spouse were the account holder.

(b) If, by reason of the death of the account holder, any person acquires the account holder's interest in a medical savings account in a case to which subparagraph (7)(a) of this section does not apply:

(i) Such account shall cease to be a medical savings account as of the date of death; and

(ii) An amount equal to the fair market value of the assets in such account on such date shall be includable, if such person is not the estate of such holder, in such person's Idaho taxable income for the taxable year which includes such date, or if such person is the estate of such holder, in such holder's Idaho taxable income for the last taxable year of such holder.

(c) The amount*includable in Idaho taxable income under subparagraph (b) of this subsection (7) by any person, other than the estate, shall be reduced by the amount of qualified medical expenses which were incurred by the decedent before the date of the decedent's death and paid by such person within one (1) year after such date. [I.C., § [63-3022K] 63-3022J, as added by 1995, ch. 362, § 2, p. 1265; am. and redesign. 1996, ch. 60, § 1, p. 175; am. 1997, ch. 318, § 1, p. 939; am. 1998, ch. 398, § 1, p. 1245; am. 1999, ch. 31, § 1, p. 60; am. 2000, ch. 274, § 150, p. 799; am. 2001, ch. 270, § 3, p. 977; am. 2002, ch. 212, § 1, p. 584; am. 2007, ch. 148, § 7, p. 427.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 148, substituted “twenty-one (21) years” for “nineteen (19) years” in subsection (2)(c)(i).

Federal References. — Section 151(b) and (c) of the Internal Revenue Code, referred to in subdivision (2)(b), and section 213(d), referred to in subdivision (2)(e), are compiled as 26 U.S.C., §§ 151(b) and (c) and 213(d), respectively.

Compiler's Notes. — Two 1995 acts — ch. 111, § 16, effective January 1, 1996, and ch. 362, § 2, effective retroactively to January 1, 1995 — created new sections designated § 63-3022J. Section 63-3022J, as enacted by ch. 111, § 16, was compiled as § 63-3022J, while § 63-3022J as enacted by S.L. 1995, ch. 362, § 2 was temporarily designated § [63-3022K] 63-3022J by the compiler. Subsequently, § 63-3022J as enacted by S.L. 1995,

ch. 363, § 2 was amended and permanently redesignated as § 63-3022K by S.L. 1996, ch. 60, § 1.

Section 2 of S.L. 1997, ch. 318, effective January 1, 1997, repealed § 5 of S.L. 1995, ch. 362 which provided that § 2 of S.L. 1995, ch. 362 [63-3022K] would be null, void, and of no effect on and after January 1, 1998.

Effective Dates. — Section 5 of S.L. 1995, ch. 362 provided that Section 2 of the act should be null, void and of no further force and effect on and after January 30, 1998.

Section 2 of S.L. 1996, ch. 60 declared an emergency and provided that the act should be in full force and approval on and after passage and approval retroactive to January 1, 1996. Approved March 1, 1996.

Section 3 of S.L. 1997, ch. 318 declared an emergency and provided that the act should be in effect on and after its passage and

approval retroactive to January 1, 1997. Approved March 24, 1997.

Section 2 of S.L. 1998, ch. 398 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 25, 1998.

Section 2 of S.L. 1999, ch. 31 declared an emergency retroactively to January 1, 1999 and approved March 1, 1999.

Section 9 of S.L. 2001, ch. 270 provides: "An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 7 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001; and Section 8 of this act shall be in full force and effect on and after its passage and approval."

Section 2 of S.L. 2002, ch. 212 declared an emergency retroactively to January 1, 2002. Approved March 22, 2002.

63-3022L. Individuals who are officers, directors, shareholders, partners or members of a corporation or partnership or beneficiaries of a trust or estate. — (1) Individuals who are officers, directors, shareholders, partners or members of a corporation or partnership transacting business in Idaho or who are beneficiaries of a trust or estate with income taxable in Idaho may elect to have Idaho tax relating to income described in subsection (2) of this section reported and paid by the corporation, partnership, trust or estate. Income subject to the election in this subsection shall be taxed at the rate applicable to corporations. The election shall be made on the return of the corporation, partnership, trust or estate from which the income is received. The election in this section is not available to an individual who has Idaho taxable income in addition to income described in subsection (2) of this section.

(2) The election in subsection (1) of this section applies to:

(a) Wages, salary and other compensation paid by the corporation, partnership, trust or estate to such officers, directors, shareholders, partners, members or beneficiaries to the extent the compensation is Idaho taxable income of the individual to whom it is paid; and

(b) The share of any income, loss, deduction or credit of an S corporation, partnership, trust or estate required to be included on such shareholder's, partner's, member's or beneficiary's Idaho return.

(c) When the gross income attributable to an individual under paragraphs (a) and (b) of this subsection (2) is less than the filing requirement of the individual under section 63-3030, Idaho Code, the income is not income under this subsection.

(3) If no election is made and an officer, director, shareholder, partner, member, or beneficiary of a corporation, partnership, trust or estate transacting business in Idaho fails to file an Idaho income tax return reporting all or any part of the items described in subsection (2) of this section or fails to pay any tax due thereon, such corporation, partnership, trust or estate shall be liable for tax on such items at the rate applicable to corporations.

(4) The provisions of this section shall not apply to a corporation, other than an S corporation, with less than fifty percent (50%) of its income taxable within this state. [I.C., § 63-3022L, as added by 1996, ch. 340, § 1, p. 1141; am. 1997, ch. 57, § 6, p. 95; am. 1999, ch. 60, § 3, p. 156; am. 2000, ch. 38, § 1, p. 70; am. 2001, ch. 270, § 4, p. 977.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1996, ch. 340 is declared an emergency and provided that the act should be in full force and effect on and after passage and approval, retroactive to January 1, 1996. Approved March 18, 1996.

Section 5 of S.L. 1999, ch. 60 declared an emergency retroactively to January 1, 1999 and approved March 15, 1999.

Section 6 of S.L. 2000, ch. 38 declared an

emergency retroactively to January 1, 2000 and approved March 22, 2000.

Section 9 of S.L. 2001, ch. 270 provided: "An emergency existing therefor, which emergency is hereby declared to exist, Sections 1 through 7 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 2001; and Section 8 of this act shall be in full force and effect on and after its passage and approval."

RESEARCH REFERENCES

A.L.R. — State income tax treatment of partnerships and partners. 2 A.L.R.6th 1.

63-3022M. Expenses and interest relating to tax exempt income.

— For taxable years commencing on and after January 1, 1999:

(1) Add interest and dividends received or accrued during the taxable year from foreign securities and from securities issued by states and other political subdivisions exempt from federal income tax under the Internal Revenue Code, less applicable amortization.

(2) Subtract any expenses and interest not allowed under sections 265 and 291 of the Internal Revenue Code in computing taxable income, as defined in section 63-3011B, Idaho Code, for interest on indebtedness incurred or continued to purchase or to carry obligations the interest of which is not subject to the taxes imposed under the Internal Revenue Code.

(3) Subtract interest and dividends received or accrued during the taxable year from securities issued:

(a) By the federal government and its instrumentalities to the extent included in taxable income and not subject to taxation by this state, and

(b) By the state of Idaho, its cities and political subdivisions, exempt from federal income tax under the Internal Revenue Code.

(4) No deduction shall be allowed for interest on indebtedness incurred or continued to purchase or to carry obligations the interest of which is not subject to the taxes imposed under this chapter. The amount of interest on indebtedness thus incurred or continued shall be an amount which bears the same ratio to the aggregate amount allowable to the taxpayer as a deduction for interest for the taxable year as the taxpayer's interest income from the obligations mentioned in the preceding sentence bears to the taxpayer's total income for the taxable year. "Aggregate amount allowable" means the taxpayer's total interest expense deducted in determining taxable income as defined in section 63-3011B, Idaho Code, plus interest expense disallowed under sections 265 and 291 of the Internal Revenue Code, plus interest

expense from a pass-through entity, plus the interest expense of a foreign corporation that, pursuant to sections 63-3027 and 63-3027B through 63-3027E, Idaho Code, is included in a combined report with the taxpayer less interest expense of any corporation included with the taxpayer in a consolidated federal return but not a part of the combined report filed with the state tax commission for the same taxable year. The deduction under this subsection shall not exceed the amount of interest and dividend income added pursuant to subsection (1) of this section less interest and dividend income from the state of Idaho, its cities and political subdivisions, subtracted pursuant to subsection (3) of this section.

(5) No deduction shall be allowed for expenses (other than interest) attributable to interest or dividend income which is not subject to the taxes imposed under this chapter. [I.C., § 63-3022M, as added by 1998, ch. 42, § 3, p. 175; am. 1999, ch. 28, § 1, p. 39.]

STATUTORY NOTES

Federal References. — Section 265 and 291 of the Internal Revenue Code, referred to in subsections (2) and (4), are codified as 26 U.S.C.S. §§ 265 and 291.

Effective Dates. — Section 6 of S.L. 1998, ch. 42, declared an emergency and provided

this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 2 of S.L. 1999, ch. 28 declared an emergency retroactively to January 1, 1999 and approved February 25, 1999.

63-3022N. Marriage penalty adjustment. — (1) To eliminate from the calculation of Idaho taxable income any marriage penalty that may exist in the basic standard deductions provided in the Internal Revenue Code, basic federal standard deductions shall be adjusted as provided in this section.

(2) As used in this section, “the marriage penalty” means the difference obtained by subtracting:

(a) The basic standard deduction for joint returns, from

(b) Two (2) times the basic standard deduction for an individual who is not married and who is not a surviving spouse or head of household.

(3) For each taxable year beginning on and after January 1, 2000, the standard deduction in section 63-3022(j)(1), Idaho Code, shall be: on a joint return, the basic federal joint standard deduction plus the marriage penalty, rounded to the nearest dollar, plus the amount of any additional standard deduction for the aged or blind for which a taxpayer may qualify under section 63 of the Internal Revenue Code.

(4) The basic federal standard deduction for an individual for whom a deduction under section 151 of the Internal Revenue Code is allowable to another taxpayer shall not be reduced below the minimum adjusted basic standard deduction provided by section 63 of the Internal Revenue Code. [I.C., § 63-3022N, as added by 2000, ch. 479, § 4, p. 1651; am. 2004, ch. 30, § 5, p. 53.]

STATUTORY NOTES

Prior Laws. — Former § 63-3022N, which comprised, I.C., § 63-3022N, as added by 1999, ch. 133, § 1, p. 379, was repealed by

S.L. 2000, ch. 479, § 3, effective January 1, 2000.

Federal References. — Section 63 of the

Internal Revenue Code, referred to in subsections (3) and (4), and section 151 of the Internal Revenue Code, referred to in subsection (4), are codified as 26 U.S.C.S. §§ 63 and 151, respectively.

Effective Dates. — Section 6 of S.L. 2000,

ch. 479 declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 7 of S.L. 2004, ch. 30 declared an emergency retroactively to January 1, 2004. Approved March 10, 2004.

63-3022O. Adjustment — Property acquired after September 10, 2001 — Expenses of elementary and secondary teachers — Small business expenses — Limitations on assessments and refunds. — For taxable years commencing on and after January 1, 2001, in computing Idaho taxable income:

(1) The adjusted basis of depreciable property, depreciation and gains and losses from sale, exchange or other disposition of depreciable property shall be computed without regard to subsection (k) of section 168 of the Internal Revenue Code; and

(2) No deduction shall be allowed relating to expenses of elementary and secondary teachers otherwise allowable under section 62(a)(2)(D) of the Internal Revenue Code; and

(3) Adjustments in computing Idaho taxable income required by subsection (1) of this section shall be made without regard to loss limitations imposed by sections 465, 469, 704(d) and 1366(d) of the Internal Revenue Code; and

(4) A taxpayer's basis in an interest in a pass-through entity, amount at risk, and passive activity loss carryover shall be the same amount for purposes of the Idaho income tax act as the amount determined under the Internal Revenue Code; and

(5) Each partner, shareholder, member or beneficiary, shall include in Idaho taxable income his share of the adjustments required by this section in computing Idaho taxable income of any pass-through entity; and

(6) Notwithstanding the provisions of sections 63-3068 and 63-3072, Idaho Code, the period of limitations for issuing a notice of deficiency determination or filing a claim for refund for any year for which an adjustment is required by this section shall not expire before three (3) years from the later of: (a) the due date of the return for the last taxable year an adjustment was required by this section, or (b) the date the return was filed for the last taxable year an adjustment was required by this section. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of section 63-3068, Idaho Code, and subsections (b) and (h) of section 63-3072, Idaho Code, only those specific items of basis, deductions, gains or losses that are computed, without regard to subsection (k) of section 168 of the Internal Revenue Code, as required by this section shall be subject to adjustment. [I.C., § 63-3022O, as added by 2003, ch. 350, § 2, p. 937; am. 2004, ch. 20, § 2, p. 22; am. 2007, ch. 11, § 1, p. 20.]

STATUTORY NOTES

Prior Laws. — Former § 63-3022O, which comprised I.C., § 63-3022O, as added by 2000, ch. 479, § 1, p. 1651; am. 2001, ch. 270, § 5, p. 977, was repealed by S.L. 2002, ch. 35,

§ 4, effective July 1, 2002.

Amendments. — The 2007 amendment, by ch. 11, in subsection (1), deleted "capital" preceding "gains" and inserted "from sale,

exchange or other disposition of depreciable property"; rewrote subsection (3) which formerly read: "When, in regard to property subject to this section, the adjusted basis of depreciable property, depreciation and capital gains and losses resulting from the provisions of this section (as previously reported by the taxpayer or as adjusted by the state tax commission) are subject to change or adjustment by the taxpayer or by the state tax commission, a claim for refund or notice of deficiency determination for amounts resulting from the changes shall be made within the greater of the time provided in sections 63-

3068 and 63-3072, Idaho Code, or the useful life of the property to which the adjustment relates."; and added subsections (4) through (6).

Federal References. — The references to the Internal Revenue Code, appearing throughout this section, are codified throughout Title 26 of the United States Code.

Effective Dates. — Section 3 of S.L. 2004, ch. 20 declared an emergency retroactively to January 1, 2004. Approved March 5, 2004.

Section 2 of S.L. 2007, ch. 11 declared an emergency retroactively to January 1, 2007, and approved on February 14, 2007.

63-3022P. Health insurance costs. — With respect to an individual taxpayer, an amount equal to the amount paid by the taxpayer during the taxable year for insurance which constitutes medical care for the taxpayer, the spouse or dependents of the taxpayer which is not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes shall be allowed as a deduction for Idaho taxable income. As used in this section, "insurance which constitutes medical care" includes any hospital or medical policy or certificate, any subscriber contract, policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, dental, vision, single employer self-funded coverage, meaning that portion of health insurance which is the retained risk of the employer, student health benefits only or coverage for medical care or treatment issued as a supplement to liability insurance. Employers shall provide to the employee a statement as to whether an employee's contribution for health insurance has been excluded from taxable income. [I.C., § 63-3022P, as added by 2001, ch. 386, § 9, p. 1348; am. 2003, ch. 10, § 2, p. 22.]

STATUTORY NOTES

Compiler's Notes. — S.L. 2001, ch. 384, § 1 and ch. 386, § 9, both effective January 1, 2001, each purported to enact a new section of chapter 30, title 67, Idaho Code, designated as § 63-3022P. Accordingly, the enactment by ch. 386 was codified as § 63-3022P and the enactment by ch. 384 was temporarily codified as § [63-3022Q] 63-3022P. The redesignation of the section enacted by S.L.

2001, ch. 384, § 1 was made permanent by S.L. 2002, ch. 35, § 5.

Effective Dates. — Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

63-3022Q. Long-term care insurance. — For taxable years commencing on or after January 1, 2004, premiums paid during the taxable year, by a taxpayer for long-term care insurance as that term is defined in section 41-4603, Idaho Code, which long-term care insurance is to be for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer, may be deducted from taxable income to the extent that the premium is not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. [I.C., § 63-3022P [63-3022Q], as added by 2001, ch. 384, § 1, p. 1347; am. and redesign. 2002, ch. 35, § 5, p. 66; am. 2004, ch. 358, § 1, p. 1066.]

STATUTORY NOTES

Compiler's Notes. — S.L. 2001, ch. 384, § 1 and ch. 386, § 9, both effective January 1, 2001, each purported to enact a new section of chapter 30, title 67, Idaho Code, designated as § 63-3022P. Accordingly, the enactment by ch. 386 was codified as § 63-3022P and the enactment by ch. 384 was temporarily codified as § [63-3022Q] 63-3022P. The redesignation of the section enacted by S.L.

2001, ch. 384, § 1 was made permanent by S.L. 2002, ch. 35, § 5.

Effective Dates. — Section 2 of S.L. 2001, ch. 384 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 2 of S.L. 2004, ch. 358 declared an emergency retroactively to January 1, 2004. Approved April 1, 2004.

63-3023. Transacting business. [Effective until January 1, 2008.]

— (a) Subject only to the limitations of the constitutions of the United States and of the state of Idaho, and except as expressly provided in subsection (b) of this section, the term “transacting business” shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property, located in this state, or engaging in or the transacting of any activity in this state, for the purpose of or resulting in economic or pecuniary gain or profit.

(b) Notwithstanding the provisions of subsection (a) of this section, any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association or other corporation, association or trust organized and existing under the laws of any state or territory of the United States other than the state of Idaho or existing under the laws of the United States including, without restriction of the generality of the foregoing, employee pension fund organizations, charitable foundations, trust funds, real estate investment trusts, or other such funds and trusts engaged in the investment of moneys, and trustees of such organizations, which does not maintain an office within the state of Idaho for any purpose shall not be deemed to be transacting business within the state of Idaho during any taxable year by reason of carrying on in this state any one (1) or more of the following activities:

- (1) Creating, acquiring or purchasing of loans, secured or unsecured, or any interest therein;
- (2) Collecting and servicing of loans in any manner whatsoever and the making of credit investigations and physical inspections and appraisals of real or personal property securing any loans or proposing to secure any loans;
- (3) Soliciting of applications for loans which are sent outside this state for approval; and
- (4) Filing of security interests; maintaining or defending any action or suit; holding, selling, assigning, transferring, collecting or enforcing any loans, or foreclosing or other disposition thereof, including acquiring title to property securing such loans by foreclosure, deed in lieu of foreclosure, or otherwise, as a result of default under the terms of the mortgage, deed of trust or other security instruments relating thereto, or the holding, protecting and maintaining of said property so acquired or the disposition thereof. [1959, ch. 299, § 23, p. 613; am. 1961, ch. 328, § 6, p. 622; am. 1988, ch. 197, § 1, p. 375; am. 1995, ch. 111, § 17, p. 347.]

STATUTORY NOTES

Compiler's Notes. — For this section as effective January 1, 2008, see the following section, also numbered in § 63-3023.

Effective Dates. — Section 30 of S.L. 1961, ch. 328 provided that the 1961 amend-

ment became effective retroactively to cover taxable years beginning January 1, 1961. See **Effective Dates**, § 63-3077.

Section 2 of S.L. 1988, ch. 197 declared an emergency. Approved March 28, 1988.

JUDICIAL DECISIONS

ANALYSIS

Business situs.

Factors affecting allocation of income.

Business Situs.

Where taxpayer derived his income for services rendered partly within and partly without the state business situs was immaterial, as the intent of the legislature was to tax only the amount of income a nonresident received as compensation for labor or personal services performed in the state and derived from the state sources. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

Where foreign corporation that leased railroad cars to various railroads operating within state, had rail cars in state, and paid property tax on those cars, under express terms of this section, corporation had business situs in state. *TTX Co. v. Idaho State Tax Comm'n*, 128 Idaho 483, 915 P.2d 713 (1996).

Under former subsection (a), nonresidents who were shareholders in an Idaho

Subchapter S corporation had an Idaho business situs for purposes of the nonresident individual income tax, and it made no difference if they received interest income in their capacity as creditors, rather than shareholders of the corporation. *Richards v. Idaho State Tax Comm'n*, 131 Idaho 476, 959 P.2d 457 (1998).

Factors Affecting Allocation of Income.

A resident of Washington, deriving his income from wages as conductor on a railroad, six miles of which was in Idaho and 141 miles of which was in Washington, properly allocated his income between Idaho and Washington, based upon the respective mileage and time spent by the taxpayer in the respective states. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

DECISIONS UNDER PRIOR LAW

"Business Situs" Construed.

The words "business situs" as used in this section referring to the taxable income of a resident individual having a business situs outside of the state of Idaho, recognizes that personal property may attain an actual situs different from the domicile of its owner, as regards the place of taxation: but the business situs arises where possession and control of a

property right is localized in some independent business or investment, which may be foreign to the owners' domicile so that the substantial use and value of the property right is primarily attached to and becomes an asset of such foreign business of the owner. *Kopp v. Baird*, 79 Idaho 152, 313 P.2d 319 (1957).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 569-573.

A.L.R. — State income tax treatment of S

corporations and their shareholders. 118 A.L.R.5th 597.

63-3023. Transacting business. [Effective January 1, 2008.] — Subject only to the limitations of the constitutions of the United States and of the state of Idaho, the term "transacting business" shall include owning or leasing, whether as lessor or lessee, of any property, including real and personal property, located in this state, or engaging in or the transacting of any activity in this state, for the purpose of or resulting in economic or pecuniary gain or profit. [1959, ch. 299, § 23, p. 613; am. 1961, ch. 328, § 6,

p. 622; am. 1988, ch. 197, § 1, p. 375; am. 1995, ch. 111, § 17, p. 347; am. 2007, ch. 59, § 1, p. 141.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 59, deleted subsection (b), which related to the creating, acquiring, purchasing, collecting and servicing of loans, solicitation of applications for loans which are sent outside of Idaho for approval, and filing of security interests, and made a related change in the existing text.

Compiler's Notes. — For this section as effective until January 1, 2008, see the preceding section, also numbered § 63-3023.

Effective Dates. — Section 2 of S.L. 2007, ch. 59 provided that the act should take effect on and after January 1, 2008.

63-3023A. No business situs. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprises I.C., § 63-3023A, as added by 1980, ch. 41, § 1, p. 68, was repealed by S.L. 1995, ch. 111, § 18, effective January 1, 1996.

63-3023B. Nonresident transportation employees. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3023B, as added by 1988, ch. 15, § 1, p. 18, was repealed by S.L. 1992, ch. 49, § 1.

63-3024. Individuals' tax and tax on estates and trusts. — For taxable year 2001, and each taxable year thereafter, a tax measured by Idaho taxable income as defined in this chapter is hereby imposed upon every individual, trust, or estate required by this chapter to file a return.

(a) The tax imposed upon individuals, trusts and estates shall be computed at the following rates:

When Idaho taxable income is:	The rate is:
Less than \$1,000	One and six-tenths percent (1.6%)
\$1,000 but less than \$2,000	\$16, plus three and six-tenths percent (3.6%) of the amount over \$1,000
\$2,000 but less than \$3,000	\$52, plus four and one-tenth percent (4.1%) of the amount over \$2,000
\$3,000 but less than \$4,000	\$93, plus five and one-tenth percent (5.1%) of the amount over \$3,000
\$4,000 but less than \$5,000	\$144, plus six and one-tenth percent (6.1%) of the amount over \$4,000
\$5,000 but less than \$7,500	\$205, plus seven and one-tenth percent (7.1%) of the amount over \$5,000
\$7,500 but less than \$20,000	\$383, plus seven and four-tenths percent (7.4%) of the amount over \$7,500
Over \$20,000	\$1,308, plus seven and eight-tenths percent (7.8%) of the amount over \$20,000

For taxable year 2000 and each year thereafter, the state tax commission shall prescribe a factor which shall be used to compute the Idaho income tax brackets provided in subsection (a) of this section. The factor shall provide an adjustment to the Idaho tax brackets so that inflation will not result in a tax increase. The Idaho tax brackets shall be adjusted as follows: multiply the bracket amounts by the percentage (the consumer price index for the calendar year immediately preceding the calendar year to which the adjusted brackets will apply divided by the consumer price index for calendar year 1998). For the purpose of this computation, the consumer price index for any calendar year is the average of the consumer price index as of the close of the twelve (12) month period for the immediately preceding calendar year, without regard to any subsequent adjustments, as adopted by the state tax commission. This adoption shall be exempt from the provisions of chapter 52, title 67, Idaho Code. The consumer price index shall mean the consumer price index for all U.S. urban consumers published by the United States department of labor. The state tax commission shall annually include the factor as provided in this subsection to multiply against Idaho taxable income in the brackets above to arrive at that year's Idaho taxable income for tax bracket purposes.

(b) In case a joint return is filed by husband and wife pursuant to the provisions of section 63-3031, Idaho Code, the tax imposed by this section shall be twice the tax which would be imposed on one-half (1/2) of the aggregate Idaho taxable income. For the purposes of this section, a return of a surviving spouse, as defined in section 2(a) of the Internal Revenue Code, and a head of household, as defined in section 2(b) of the Internal Revenue Code, shall be treated as a joint return and the tax imposed shall be twice the tax which would be imposed on one-half (1/2) of the Idaho taxable income.

(c) In the case of a trust that is an electing small business trust as defined in section 1361 of the Internal Revenue Code, the special rules for taxation of such trusts contained in section 641 of the Internal Revenue Code shall apply except that the maximum individual rate provided in this section shall apply in computing tax due under this chapter.

(d) The state tax commission shall compute and publish Idaho income tax liability for taxpayers at the midpoint of each bracket of Idaho taxable income in fifty dollar (\$50.00) steps to fifty thousand dollars (\$50,000), rounding such calculations to the nearest dollar. Taxpayers having income within such brackets shall file returns based upon and pay taxes according to the schedule thus established. The state tax commission shall promulgate rules defining the conditions upon which such returns shall be filed. [1959, ch. 299, § 24, p. 613; am. 1963, ch. 425, § 1, p. 1104; am. 1965, ch. 195, § 39, p. 408; am. 1967, ch. 294, § 4, p. 828; am. 1968 (2nd E.S.), ch. 27, § 1, p. 51; am. 1969, ch. 319, § 8, p. 982; am. 1969, ch. 456, § 1, p. 1262; am. 1971, ch. 302, § 2, p. 1242; am. 1972, ch. 398, § 4, p. 1149; am. 1973, ch. 326, § 1, p. 690; am. 1974, ch. 303, § 1, p. 1782; am. 1975, ch. 138, § 1, p. 309; am. 1975, ch. 170, § 1, p. 460; am. 1976, ch. 1, § 2, p. 3; am. 1976, ch. 76, § 1, p. 247; am. 1986, ch. 90, § 3, p. 262; am. 1987, ch. 93, § 3, p. 176; am. 1987, ch. 342, § 1, p. 680; am. 1992, ch. 11, § 4, p. 17; am. 1995, ch. 111, § 19, p. 347; am.

2000, ch. 479, § 2, p. 1651; am. 2001, ch. 386, § 1, p. 1348; am. 2002, ch. 35, § 6, p. 66; am. 2003, ch. 10, § 3, p. 22; am. 2006, ch. 195, § 1, p. 599.]

STATUTORY NOTES

Cross References. — Additional tax required when filing income tax returns, § 63-3082.

Amendments. — The 2006 amendment, by ch. 195, inserted “without regard to any subsequent adjustments” in the fourth sentence of the second paragraph in subsection (a).

Legislative Intent. — Section 1 of S.L. 1976, ch. 1, read: “Section 63-3024, Idaho Code, relating to taxes on income of individuals, trusts, and estates, and credits and refunds to resident individual taxpayers, has been amended continuously since it was first enacted in 1959. Section 63-3024, Idaho Code, was most recently amended by this legislature by Chapter 138 (House Bill No. 286) and Chapter 170 (Senate Bill No. 1054), Laws of 1975, wherein this legislature provided for certain credits or refunds to resident individual taxpayers. It was the intention of this legislature to provide for a credit against taxes and a refund of the balance of the unused credit if the credit exceeds the tax liability. A question has arisen, however, whether the text of Chapter 138, Laws of 1975, clearly expresses the intention of this legislature in this regard, and it is prudent that this legislature make its intention perfectly clear. The legislature by this act does not alter the original intent of the 1975 amendments to Section 63-3024, Idaho Code, but wished to state the law contained in that section clearly and free of ambiguity or misinterpretation.”

Federal References. — Sections 2, 1361, and 641 of the Internal Revenue Code are compiled as 26 U.S.C. §§ 2, 1361, and 641.

Compiler's Notes. — The words in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1968, ch. 27 (2nd Ex. Sess.) declared an emergency and provided it should be retroactive to January 1, 1967.

Section 2 of S.L. 1969, ch. 456 declared an emergency retroactively to January 1, 1969, and shall apply to fiscal years beginning on or after January 1, 1969.

Section 2 of S.L. 1973, ch. 326 declared an emergency and provided that the act should

take effect retroactively to January 1, 1973. Approved March 16, 1973.

Section 2 of S.L. 1974, ch. 303 declared an emergency and provided that the act should take effect retroactively to January 1, 1974. Approved April 5, 1974.

Section 3 of S.L. 1975, ch. 138 declared an emergency and also provided that the act would be in full force and effect on and after its passage and approval and retroactively to January 1, 1975. Approved March 26, 1975.

Section 2 of S.L. 1975, ch. 170 declared an emergency and also provided that the act would be in full force and effect on and after its passage and approval and retroactively to January 1, 1975. Approved March 27, 1975.

Section 2 of S.L. 1976, ch. 76 declared that the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 10, 1976.

Section 4 of S.L. 1986, ch. 90 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1986.” Approved March 22, 1986.

Section 7 of S.L. 1987, ch. 342 read: “(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987.

“(2) Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1987, and tax payments due in September, 1987, under applicable federal law, shall correspondingly be due in September, 1987, under the provisions of this act.” Approved April 6, 1987.

Section 6 of S.L. 2000, ch. 479 declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

JUDICIAL DECISIONS

ANALYSIS

Applicability of regulations.
Business situs.
Computation by nonresident.

Constitutionality.
Credits and refunds.
Factors affecting allocation of income.
Nonresident's income.
Purpose.
Sources.

Applicability of Regulations.

Former Regulation 14 (IDAPA 35.01.14) (1985) was a regulation that changed the provisions of this section to provide that a nonresident shall compute the tax on taxable income as required for Idaho residents under this section: this language had the effect of unlawfully striking from the statute on a nonresident individual, the limitation on income derived from sources within the state of Idaho. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

Business Situs.

Where taxpayer derived his income for services rendered partly within and partly without the state, business situs was immaterial, as the intent of the legislature was to tax only the amount of income a nonresident received as compensation for labor or personal services performed in the state and derived from the state sources. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

Computation by Nonresident.

A practical reading of this section, § 63-3027 and § 63-3027A indicates that a nonresident individual should compute his taxes pursuant to § 63-3027A, not § 63-3027. *Preston v. Idaho State Tax Comm'n*, 131 Idaho 502, 960 P.2d 185 (1998).

Constitutionality.

Where the enrolling clerk erroneously copied into Session Laws 1959, ch. 299, the figure "3.5" instead of "3" in § 24, subd. (a) as the house amendment provided, but all three of the divisions of legislative power — the house, the senate, and the governor — approved the house amendment and made it a part of the act, the bill was constitutionally enacted as amended by the house. *State ex rel. Brassey v. Hanson*, 81 Idaho 403, 342 P.2d 706 (1959).

Credits and Refunds.

The following annotations were decided prior to the 1976 amendment of this section and the enactment of § 63-3024A which now provides for credits and refunds.

The incorporation into the title of the language to the effect that the 1972 amendment of this section was intended to clarify the section "in accordance with previous intent" could not retroactively compel the courts to hold that the 1971 amendment did not accurately express the legislature's intent since there was no language in the 1972 amendment which affected the tax year 1971. *Ware*

v. Idaho State Tax Comm'n, 98 Idaho 477, 567 P.2d 423 (1977).

The 1971 amendment to this section was not enacted irrationally and had no appearance of clerical error in its provisions regarding refunds to elderly taxpayers. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Under the 1971 amended section all individual taxpayers were entitled to a \$10.00 credit for each of their personal exemptions, but the 65-year-old taxpayer could have that credit and also obtain a \$10.00 refund for each of the personal, 65 or over and blindness and dependents' exemptions to which he was entitled. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Where the state tax commission had no intention of allowing claims for refunds provided under the 1971 amendment to this section, the requirement of filing a claim for such refunds was a useless act and taxpayers who failed to file were entitled to obtain their refund. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Prior to the 1971 amendment to this section and after the 1972 amendment thereto, a 65-year-old taxpayer whose income was such that he did not use all of his credits, upon application, could gain a refund of the credit or a portion thereof which was not used as an offset against any income tax owed. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Where the plaintiffs, who were taxpayers 65 years old or older, filed for a refund as provided for under the 1971 amendment to this section they were entitled to the amounts they had claimed on their 1971 tax returns. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Where the state tax commission, by passage of a regulation and promulgation of a form, foreclosed eligible claimants from requesting the refunds provided under the 1971 amendment to this section, the regulation and form contravened the express language of the statute and the taxpayers could not thus be denied the payment of the refund. *Ware v. Idaho State Tax Comm'n*, 98 Idaho 477, 567 P.2d 423 (1977).

Factors Affecting Allocation of Income.

A resident of Washington, deriving his income from wages as conductor on a railroad, six miles of which was in Washington, properly allocated his income between Idaho and

Washington, based upon the respective mileage and time spent by the taxpayer in the respective states. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

Nonresident's Income.

The train crews' presence in this state while traveling on transcontinental trains is not a sufficient nexus under the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution to allow this state to subject the compensation they earn while traveling through this state to state income taxes; thus the application of this state's income tax statutes to the income of train crews while traveling through this state is unconstitutional. *Blangers v. State, Dep't of Revenue & Taxation*, 114 Idaho 944, 763 P.2d 1052 (1988), cert. denied, 489 U.S. 1090, 109 S. Ct. 1557, 103 L. Ed. 2d 859 (1989).

The tax imposed on nonresidents under this section is limited to that part of the taxable income of the nonresident earned in Idaho. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

The plain meaning of former § 63-3027A provides for a reduction or diminution of the tax imposed by this section; the amount of reduction is to be to that portion that the taxpayer's Idaho adjusted gross income bears to the taxpayer's total adjusted gross income, which would result in a fraction by which the tax imposed by this section would be computed; the Idaho earned adjusted gross income would represent the numerator and the total of the taxpayer's adjusted gross income would represent the denominator. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

The plain language of this section and former § 63-3027A, when taken together, does limit the imposition of the tax as it

pertains to nonresidents to that taxpayer's Idaho source of income and then reduces the tax so imposed by the application of former § 63-3027A by the proportion that the taxpayer's Idaho source adjusted gross income bears to that taxpayer's total adjusted gross income. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

The denominator of the statutory allocation formula, used to determine how much of a nonresident's income is allocable to Idaho sources where the nonresident taxpayer is on call 365 days a year, should be the days in which he actually performs services for his employer and not all of the 365 days in which he might theoretically have been asked to perform services. *Hamilton v. Tax Commission*, 119 Idaho 552, 808 P.2d 1297 (1991).

Purpose.

The purpose of the reference in this section to § 63-3027A was to provide for means of computing taxable income, not to determine what portion of the gross income of a nonresident was derived from sources within this state. *Blangers v. State, Dep't of Revenue & Taxation*, 114 Idaho 944, 763 P.2d 1052 (1988), cert. denied, 489 U.S. 1090, 109 S. Ct. 1557, 103 L. Ed. 2d 859 (1989).

The plain meaning of this section is to impose a tax on nonresidents upon that part of the taxable income derived from sources within the state of Idaho. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

Sources.

The former use of the word "sources" referred not to the person or entity paying, but to the location where the services were performed or the money was earned. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 510, 511.

A.L.R. — State income tax treatment of S

corporations and their shareholders. 118 A.L.R.5th 597.

63-3024A. Credits and refunds. — (a) Any resident individual not entitled to the credit allowed in subsection (b)(1), who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of twenty dollars (\$20.00) for each personal exemption for which a deduction is permitted by section 151(b) and (c) of the Internal Revenue Code if such deduction is claimed on the taxpayer's Idaho income tax return, and if the individual for whom the deduction is claimed is a resident of the state of Idaho. If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or

refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(b)(1) A resident individual who has reached his sixty-fifth birthday before the end of his taxable year, who is required to file by law and who has filed an Idaho income tax return, shall be allowed a credit against taxes due under the Idaho income tax act equal to the amount of thirty-five dollars (\$35.00) for each personal exemption representing himself, a spouse over the age of sixty-five (65) years, or a dependent over the age of sixty-five (65) years, but shall be allowed a credit against taxes due under the Idaho income tax act equal to twenty dollars (\$20.00) for each personal exemption representing a spouse or dependent under the age of sixty-five (65) years. If taxes due are less than the total credit allowed, the taxpayer shall be paid a refund equal to the balance of the unused credit. If the credit or refund is not claimed for the year for which the individual income tax return is filed, the right thereafter to claim such credit or refund shall be forfeited. The state tax commission shall prescribe the method by which the refund, if any, is to be made to the taxpayer.

(2) A resident individual who has reached his sixty-fifth birthday and is not required by law to file an Idaho income tax return and who has received no credit or refund under any other subsection of this section, shall be entitled to a refund of thirty-five dollars (\$35.00). Any refund shall be paid to such individual only upon his making application therefor at such time and in such manner as may be prescribed by the state tax commission.

(c) A resident individual of the state of Idaho who is:

(i) blind, or

(ii) a disabled American veteran of any war engaged in by the United States, whose disability is recognized as a service connected disability of a degree of ten percent (10%) or more, or who is in receipt of a pension for nonservice connected disabilities, in accordance with laws and regulations administered by the United States veterans administration, substantiated by a statement as to status signed by a responsible officer of the United States veterans administration, or

(iii) over sixty-two (62) years of age, and has been allowed none, or less than all, of the credit provided by subsection (a) or subsection (b) of this section, shall be entitled to a payment from the refund fund in an amount equal to twenty dollars (\$20.00), or the balance of his unused credit, whichever is less, upon making application therefor at such time and in such manner as the state tax commission may prescribe.

(d) Any part-year resident entitled to a credit under this section shall receive a proportionate credit, in the manner above provided, reflecting the part of the year in which he was domiciled in this state.

(e) No credit or refund may be claimed for an exemption which represents a person who has himself filed an Idaho income tax return claiming a deduction for his own personal exemption, and in no event shall more than

one (1) taxpayer be allowed a credit or refund for the same exemption, or under more than one (1) subsection of this section.

(f) The refunds authorized by this section shall be paid from the state refund fund in the same manner as the refunds authorized by section 63-3067, Idaho Code.

(g) An application for any refund which is due and payable under the provisions of this section must be filed with the state tax commission within three (3) years of:

(i) the due date, including extensions, of the return required under section 63-3030, Idaho Code, if the applicant is required to file a return, or

(ii) the 15th day of April of the year following the year to which the application relates if the applicant is not required to file a return. [I.C., § 63-3024A, as added by 1976, ch. 1, § 3, p. 3; am. 1977, ch. 89, § 1, p. 181; am. 1978, ch. 140, § 1, p. 317; am. 1983, ch. 20, § 1, p. 56; am. 1987, ch. 93, § 4, p. 176; am. 1993, ch. 3, § 2, p. 5; am. 1996, ch. 202, § 1, p. 624; am. 2001, ch. 386, § 2, p. 1348.]

STATUTORY NOTES

Federal References. — Section 151 of the Internal Revenue Code, referred to in subsection (a), is compiled as 26 U.S.C. § 151.

Effective Dates. — Section 2 of S.L. 1977, ch. 89 declared an emergency and provided that the act should be in full force and effect

on and after approval retroactive to January 1, 1977. Approved March 17, 1977.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

JUDICIAL DECISIONS

ANALYSIS

Credits and refunds.
Grocery credit.

Credits and Refunds.

See annotations under this heading under § 63-3024 for decisions prior to the 1976 amendment of § 63-3024 deleting the provisions concerning credits and refunds and the 1976 enactment of this section.

Grocery Credit.

The grocery credit as described in this sec-

tion is not a form of social welfare legislation intended to provide people with the very means by which to live; it is an income tax deduction intended to replace sales taxes paid for food, and therefore, the credit is property of the estate and is not subject to exemption. In re Jones, 107 Bankr. 751 (Bankr. D. Idaho 1989).

RESEARCH REFERENCES

A.L.R. — What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A.

§ 6511(a)) for refund of tax overpayments. 160 A.L.R. Fed. 137.

63-3024B. Income tax credits. [Null and void.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3024B, as added by 1997, ch. 259, § 3, p. 739; am. 2001, ch. 103,

§ 98, p. 253, on January 1, 2003, expired and became null and void pursuant to § 4 of S.L. 1997, ch. 259.

63-3025. Tax on corporate income. — (1) For taxable years commencing on and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income of a corporation, other than an S corporation, which transacts or is authorized to transact business in this state or which has income attributable to this state. The tax shall be equal to seven and six-tenths percent (7.6%) of Idaho taxable income.

(2) In the case of an S corporation that is required to file a return under section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided in subsection (1) of this section upon both:

(a) Net recognized built-in gain attributable to this state. The amount of net recognized built-in gain attributable to this state shall be computed in accordance with section 1374 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(b) Excess net passive income attributable to this state. The amount of excess net passive income attributable to this state shall be computed in accordance with section 1375 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(3) The tax imposed by subsection (1) or (2) of this section shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive mining corporations.

(4) The tax imposed by this section shall not apply to corporations taxed pursuant to the provisions of section 63-3025A, Idaho Code. [I.C., § 63-3025, as added by 1982, ch. 203, § 7, p. 533; am. 1983, ch. 221, § 1, p. 616; am. 1987, ch. 342, § 2, p. 725; am. 1995, ch. 111, § 20, p. 347; am. 2001, ch. 386, § 3, p. 1348; am. 2007, ch. 14, § 1, p. 25.]

STATUTORY NOTES

Prior Laws. — Former § 63-3025 which comprised (I.C., § 63-3025, as added by 1980, ch. 40, § 1, p. 67), was repealed by S.L. 1982, ch. 203, § 2, effective January 1, 1983.

Another former § 63-3025 which comprised S.L. 1959, ch. 299, § 25, p. 613; am. 1961, ch. 328, § 7, p. 622; am. 1963, ch. 425, § 2, p. 1104; am. 1965, ch. 195, § 40, p. 408; am. 1972, ch. 398, § 7, p. 1149, was repealed by S.L. 1979, ch. 105, § 3.

Amendments. — The 2007 amendment, by ch. 14, rewrote the section, adding the designations and the provisions of subsection (2). Prior to the amendment, the section read: "For taxable years commencing on and after January 1, 2001, a tax is hereby imposed on the Idaho taxable income of a corporation which transacts or is authorized to transact business in this state or which has income attributable to this state. The tax shall be equal to seven and six-tenths percent (7.6%) of Idaho taxable income; provided, however, that the tax shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive

mining corporations. The tax imposed by this section shall not apply to corporations taxed pursuant to the provisions of section 63-3025A, Idaho Code."

Federal References. — Section 1375 of the Internal Revenue Code, referred to in paragraph (2)(b), is codified as 26 U.S.C.S. § 1375.

Effective Dates. — Section 10 of S.L. 1982, ch. 203, provided that this section should take effect on January 1, 1983.

Section 7 of S.L. 1987, ch. 342 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987.

"(2) Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1987, and tax payments due in September, 1987, under applicable federal law, shall correspondingly be due in September, 1987, under the provisions of this act." Approved April 6, 1987.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001

and approved April 11, 2001.

Section 2 of S.L. 2007, ch. 14, declared an

emergency retroactively to January 1, 2007,

and approved February 14, 2007.

63-3025A. Franchise tax. — (1) For taxable years commencing on and after January 1, 2001, a franchise tax shall be imposed upon any corporation, other than an S corporation, for the privilege of exercising its corporate franchise within the state during such taxable year including, but not limited to, corporations engaged in business in Idaho for the exclusive purpose of performing contracts with the United States department of energy at the Idaho national laboratory or any successor organization, which tax shall be measured by income which is attributable to this state under the provisions of this chapter and which tax shall be at the rate provided in section 63-3025, Idaho Code.

(2) In the case of an S corporation that is required to file a return under section 63-3030, Idaho Code, a tax is hereby imposed at the rate provided in subsection (1) of this section upon both:

(a) Net recognized built-in gain attributable to this state. The amount of net recognized built-in gain attributable to this state shall be computed in accordance with section 1374 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(b) Excess net passive income attributable to this state. The amount of excess net passive income attributable to this state shall be computed in accordance with section 1375 of the Internal Revenue Code subject to the apportionment and allocation provisions of section 63-3027, Idaho Code.

(3) The tax imposed by subsection (1) or (2) of this section shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive mining corporations; but the twenty dollar (\$20.00) minimum tax shall apply to corporations qualified to file returns and actually filing returns under the provisions of subchapter "S" of the Internal Revenue Code. [I.C., § 63-3025A, as added by 1982, ch. 203, § 8, p. 533; am. 1983, ch. 221, § 2, p. 616; am. 1987, ch. 342, § 3, p. 725; am. 1995, ch. 111, § 21, p. 347; am. 2001, ch. 386, § 4, p. 1348; am. 2007, ch. 10, § 1, p. 10; am. 2007, ch. 14, § 2, p. 25.]

STATUTORY NOTES

Prior Laws. — Former § 63-3025A which comprised (I.C., 63-3025A, as added by 1961, ch. 328, § 8, p. 622; am. 1963, ch. 425, § 3, p. 1104; am. 1965, ch. 195, § 41, p. 408; am. 1972, ch. 398, § 8, p. 1149; am. 1979, ch. 105, § 4, p. 251; am. 1980, ch. 40, § 2, p. 67), was repealed by S.L. 1982, ch. 203, § 2, effective January 1, 1983.

Amendments. — This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 10, deleted "engineering and environmental" following "Idaho national" and inserted "or any successor organization" following "laboratory."

The 2007 amendment, by ch. 14, rewrote

the section, adding the designations and the provisions of subsection (2). Prior to the amendment, the section read: "For taxable years commencing on and after January 1, 2001, a franchise tax shall be imposed upon any corporation for the privilege of exercising its corporate franchise within the state during such taxable year including, but not limited to, corporations engaged in business in Idaho for the exclusive purpose of performing contracts with the United States department of energy at the Idaho national engineering and environmental laboratory, which tax shall be measured by income which is attributable to this state under the provisions of this chapter and which tax shall be at the rate

provided in section 63-3025, Idaho Code; provided, however, that the tax shall not be less than twenty dollars (\$20.00); provided further that the twenty dollar (\$20.00) minimum payment shall not be collected from nonproductive mining corporations; but the twenty dollar (\$20.00) minimum tax shall apply to corporations qualified to file returns and actually filing returns under the provisions of subchapter 'S' of the Internal Revenue Code."

Federal References. — Subchapter "S" of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. §§ 1371-1379.

Effective Dates. — Section 10 of S.L. 1982, ch. 203 provided that this section should take effect on January 1, 1983.

Section 7 of S.L. 1987, ch. 342 read: "(1) An

emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987.

"(2) Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1987, and tax payments due in September, 1987, under applicable federal law, shall correspondingly be due in September, 1987, under the provisions of this act." Approved April 6, 1987.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 2 of S.L. 2007, ch. 14, declared an emergency retroactively to January 1, 2007, and approved February 14, 2007.

63-3025B. Organizations exempt from the tax imposed by this chapter. — (1) Except as provided in subsection (4) of this section, an organization described in section 501 of the internal revenue code, and the additional organizations listed below shall be specifically exempt from taxation under this chapter unless such exemption is denied under section 502, 503 or 504 of the internal revenue code:

(a) Fraternal beneficiary societies, orders, or associations, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system;

(b) Farmer's or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurers and reciprocal underwriters of the same class) the income of which is used or held only for the purpose of paying losses or expenses;

(c) Federal land banks and national farm loan associations, as provided in the federal farm loan act, as amended.

(2) Farmer's cooperatives shall be exempt from taxation under this chapter to the extent exempted by section 521 of the internal revenue code.

(3) Federal savings and loan associations shall not be exempt from taxation under this chapter.

(4) Unrelated business income as defined in the internal revenue code shall be subject to taxation under this chapter. [I.C., § 63-3025B, as added by 1995, ch. 111, § 23, p. 347; am. 1997, ch. 57, § 7, p. 95.]

STATUTORY NOTES

Prior Laws. — Former § 63-3025B, which comprised I.C., § 63-3025B, as added by 1984, ch. 103, § 1, p. 241; am. 1985, ch. 106, § 1, p. 190, am. 1995, ch. 314, § 1, p. 1075, was repealed by S.L. 1995, ch. 111, § 22, effective January 1, 1996.

Federal References. — Sections 501, 502, 503 and 504 of the Internal Revenue Code, referred to in the introductory paragraph, are

compiled as 26 U.S.C. §§ 501, 502, 503 and 504.

Section 521 of the Internal Revenue Code, referred to in subsection (2), is compiled as 26 U.S.C., § 521.

The federal farm loan act, referred to in subsection (1)(c), was repealed by Act Dec. 10, 1971, P.L. 92-181.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Accumulated surplus.
Purpose.

Accumulated surplus.

The fact that plaintiff invested a substantial amount of its capital and surplus in various qualified securities, from which it received a substantial income, such investment did not destroy plaintiff's standing as a mutual company, nor deprive it of its exempt status. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

Where a mutual fire insurance company accumulated a surplus of \$432,095, which compared to an outstanding risk of \$100,000,000 amounted to little more than .43 of 1% of such outstanding risk, and in order to write other kinds of insurance was required to maintain a surplus in excess of \$300,000, such surplus was not excessive and did not disqualify the company from statutory exemption. *Snake River Mut. Fire Ins. Co. v.*

Neill, 80 Idaho 534, 336 P.2d 107 (1959).

Unless the amount of a surplus so far exceeds all reasonable contingencies as to indicate a purpose on the part of the company to hold and use such surplus for a purpose or purposes other than the payment of losses and expenses, neither the tax collector nor the court should say that it has forfeited the exemption granted by the legislature. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

Purpose.

The exemption granted by the legislature recognizes that a mutual insurance company is engaged in business for the purpose of providing insurance to its members substantially at cost. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 332-391.

63-3025C. Corporations exempt from minimum tax. — The minimum tax provisions of sections 63-3025 and 63-3025A, Idaho Code, shall not apply to any corporation which is not organized for profit and is not required to pay any federal tax on unrelated business income under the provisions of section 511 of the internal revenue code. [I.C., § 63-3025C, as added by 1986, ch. 18, § 1, p. 59.]

STATUTORY NOTES

Federal References. — Section 511 of the internal revenue code, is codified as 26 U.S.C.S. § 511.

Effective Dates. — Section 2 of S.L. 1986, ch. 18 read: "An emergency existing therefor,

which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1986." Approved February 28, 1986.

63-3025D. Payment for dependents sixty-five years of age or older or persons with developmental disabilities. — (1) In lieu of the deduction from taxable income allowed by section 63-3022E, Idaho Code, a resident individual who maintains a household, which includes as an immediate member of the family residing in that household, one (1) or more individuals sixty-five (65) years of age or older or individuals with developmental disabilities, as defined in subsection (5) of section 66-402, Idaho Code, regardless of the age of the person when such developmental disabili-

ity appeared, each of whom receives more than one-half (1/2) of his or her support for the year from the individual who maintains the household, shall be entitled to a payment from the refund account of one hundred dollars (\$100) for each such elderly member of the family or family member with a developmental disability. Any such payment shall be paid to such individual only upon his making application therefor at such time and in such manner as may be prescribed by the state tax commission.

(2) No more than three (3) such payments shall be made under the provisions of this section to any one (1) individual in any calendar year.

(3) No payment may be claimed under the provisions of this section by the individual himself except as set forth in subsection (4) of this section.

(4) A credit of one hundred dollars (\$100) shall be allowed under this section for a person with a developmental disability as defined in subsection (5) of section 66-402, Idaho Code, who is filing his own tax return. [I.C., § 63-3025D, as added by 1981, ch. 201, § 4, p. 354; am. 1994, ch. 104, § 2, p. 232; am. 1999, ch. 293, § 7, p. 732; am. 2002, ch. 35, § 7, p. 66.]

STATUTORY NOTES

Effective Dates. — Section 5 of Acts 1981, ch. 201 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1981. Approved April 1, 1981.

Section 3 of S.L. 1994, ch. 104, declared an emergency and provided this act shall be in full force and effect on and after March 16, 1994, and retroactively to January 1, 1994. Approved March 16, 1994.

63-3026. Computing Idaho taxable income of resident individuals, trusts and estates. — The Idaho taxable income of resident individuals, trusts or estates shall be computed by making appropriate adjustments under the provisions of section 63-3022, Idaho Code, to the taxable income of the taxpayer. [I.C., § 63-3026, as added by 1995, ch. 111, § 25, p. 347.]

STATUTORY NOTES

Prior Laws. — Former § 63-3026, which comprised 1959, ch. 299, § 26, p. 613; am. 1961, ch. 328, § 9, p. 622, was repealed by

S.L. 1995, ch. 111, § 24, effective January 1, 1996.

63-3026A. Computing Idaho taxable income of part-year or non-resident individuals, trusts and estates. — (1) For nonresident individuals, trusts, or estates the term "Idaho taxable income" includes only those components of Idaho taxable income as computed for a resident which are derived from or related to sources within Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(2) For part-year resident individuals, trusts or estates the term "Idaho taxable income" includes the total of: (a) Idaho taxable income as computed for a resident for the portion of the tax period during which a taxpayer is domiciled in or is residing in Idaho, plus (b) those components of Idaho taxable income which are derived from or related to sources within Idaho for

that portion of the tax period during which a taxpayer is not domiciled in and is not residing in Idaho. This is to be computed without the deductions for either the standard deduction or itemized deductions or personal exemptions except as provided in subsection (4) of this section.

(3) For the purposes of subsections (1) and (2) of this section:

(a) Income shall be considered derived from or relating to sources within Idaho when such income is attributable to or resulting from:

(i) Any business, trade, profession or occupation conducted or carried on in this state, including the distributive share of partnership income and deductions, and the pro rata share of S corporation income and deductions;

(ii) The ownership or disposition of any interest in real or tangible personal property located in this state;

(iii) The ownership or disposition of any interest in intangible personal property only to the extent that such property is employed in a business, trade, profession or occupation conducted or carried on in this state. Provided however, that interest income from an installment sale of real or tangible personal property shall constitute income from sources within this state to the extent that the property sold was located within this state. Provided further, that interest income received by a partner or shareholder of a partnership or S corporation from such partnership or S corporation shall constitute income from sources within this state to the extent that the partnership or S corporation is transacting business within this state;

(iv) A resident estate or trust;

(v) A nonresident estate or trust to the extent the income and deductions of the nonresident estate or trust were derived from or related to sources within this state;

(vi) The conduct of pari-mutuel wagering, charitable gaming or any other form of gambling taking place within this state, except as expressly limited in section 67-7439, Idaho Code;

(vii) Gains or losses realized from the sale or other disposition of a partnership interest or stock in an S corporation to the extent of the partnership's or S corporation's Idaho apportionment factor in the taxable year immediately preceding the year of sale.

(b) Notwithstanding the provisions of subsection (3)(a) of this section, transactions and investments made, placed or directed by Idaho resident registered broker-dealers and investment advisers or institutions exempt from registration under the Idaho securities act in securities listed with or through the New York Stock Exchange, the American Stock Exchange or any other stock exchange registered with the United States securities and exchange commission and approved by the director of the department of finance which generate dividends, interest, capital gains or similar profits or returns for nonresidents not otherwise subject to Idaho income taxation shall not result in the intangible property being deemed to have a situs outside the domicile of the owner.

(c) Nonresident individuals shall not be taxable on investment income from a qualified investment partnership. For purposes of this paragraph,

a "qualified investment partnership" means a partnership, as defined in section 63-3006B, Idaho Code, that derives at least ninety percent (90%) of its gross income from investments that produce income that would not be taxable to a nonresident individual if the investment were held by that individual.

(d) Compensation paid by the United States for active service in the armed forces of the United States, performed by an individual not domiciled in this state, shall not constitute income derived from or related to sources within this state.

(e) The income of nonresident or part-year resident individuals, trusts or estates which is derived from or related to sources both within and without this state shall be attributable to this state in the manner prescribed in the rules of the state tax commission.

(4) In computing the Idaho taxable income of a part-year or nonresident individual, trust or estate, the standard deduction or itemized deductions, as defined in section 63-3022(j), Idaho Code, if applicable, and the exemptions, as defined in section 151 of the Internal Revenue Code or any allowance in lieu of such deduction, shall be allowed in the proportion that paragraph (a) of this subsection bears to paragraph (b) of this subsection:

(a) The Idaho taxable income of the taxpayer modified as follows:

(i) No allowance shall be made for either the standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction.

(b) The Idaho taxable income as would be calculated for a resident of Idaho modified as follows:

(i) No allowance shall be made for either a standard deduction or itemized deductions;

(ii) No deduction shall be made for personal exemptions or any allowance in lieu of such deduction;

(iii) Compensation for active military service in the armed forces shall not be deducted;

(iv) Income earned within the original exterior boundaries of any federally created Indian reservation by an enrolled Indian in a federally recognized Indian tribe on a federally recognized Indian reservation shall be added if not otherwise included.

(5) An adjustment may be made to eliminate distortions in the amount of net income attributable to a taxpayer's activities within the state of Idaho. Such deductions shall be limited to circumstances involving itemized deductions as referred to in subsection (4) of this section and which reflect:

(a) A failure to reflect the net income or deduction after reimbursements have been received; or

(b) A failure to reflect the net amount of mortgage interest income or expense from activities within Idaho.

(6) For the purposes of subsections (1) and (2) of this section, deductions and adjustments allowed in computing the Idaho taxable income of nonresident and part-year resident individuals, trusts and estates shall be prescribed in the rules of the state tax commission. Such rules shall be based upon:

- (a) Whether or not the deduction or adjustment is related to the production of income reportable to Idaho;
- (b) Whether or not the deduction or adjustment is related to income received, expenses paid, or events of tax consequence which occurred during a portion of a taxable year that the taxpayer was domiciled in or residing in Idaho; or
- (c) Any other appropriate basis for making the adjustment. An "appropriate basis" is one which the state tax commission finds is needed to insure that the amount of Idaho taxable income is fairly and reasonably related to a taxpayer's activities in this state. [I.C., § 63-3026A, as added by 1995, ch. 111, § 26, p. 347; am. 1996, ch. 40, § 3, p. 103; am. 1998, ch. 42, § 4, p. 175; am. 2000, ch. 38, § 5, p. 70; am. 2005, ch. 21, § 1, p. 57; am. 2005, ch. 405, § 1, p. 1380; am. 2007, ch. 12, § 1, p. 21.]

STATUTORY NOTES

Amendments. — This section was amended by two 2005 acts which appear to be compatible and have been compiled together.

The 2005 amendment, by ch. 21, § 1, added subsection (3)(a)(viii).

The 2005 amendment, by ch. 405, § 1, added subsection (3)(c) and redesignated former subsections (3)(c) and (d) and (3)(d) and (e).

The 2007 amendment, by ch. 12, rewrote subsection (c) which formerly read: "Notwithstanding the provisions of subsection (3)(a) of this section, when intangible property owned by a limited liability company, partnership or other entity taxed as a partnership for federal income tax purposes generates dividends, interest, capital gains or similar profits or returns, such income shall not constitute income derived from or related to sources within Idaho, provided that the business activity of such entity is limited to the investment in securities and activities incident thereto."

Federal References. — Section 151 of the Internal Revenue Code, referred to in the introductory paragraph of subsection (4), is codified as 26 U.S.C.S. § 151.

Effective Dates. — Section 6 of S.L. 1998, ch. 42, declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 6 of S.L. 2000, ch. 38 declared an emergency retroactively to January 1, 2000 and approved March 22, 2000.

Section 2 of S.L. 2005, ch. 21 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

Section 2 of S.L. 2005, ch. 405 declared an emergency retroactively to January 1, 2001. Approved April 15, 2005.

Section 2 of S.L. 2007, ch. 12, declared an emergency retroactively to January 1, 2007, and approved February 14, 2007.

JUDICIAL DECISIONS

ANALYSIS

Former statutes not affected.
Income from state sources.

Former Statutes Not Affected.

The 1995 enactment of the definition of Idaho source income in subsection (3) of this section did not retroactively create an ambiguity in the income tax law as it existed in 1989 and 1990. *Richards v. Idaho State Tax Comm'n*, 131 Idaho 476, 959 P.2d 457 (1998).

Income From State Sources.

Interest income derived from a loan made

by nonresidents to an Idaho corporation in which they were shareholders and used by the corporation as capital to finance its business operations constituted income from sources with the state of Idaho for purposes of the nonresident individual income tax imposed under former § 63-3024. *Richards v. Idaho State Tax Comm'n*, 131 Idaho 476, 959 P.2d 457 (1998).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Income arising from state.

Nonresidents' income.

—On call all year.

Unitary business.

Income Arising from State.

The income referred to in subdivision (a)(1) of former section was income arising from the taxpayer's trade or business which was conducted, in part at least, in this state; the state might have included as business income only the taxpayer's income arising from a trade or business conducted in this state and was not entitled to apportion income arising from a trade or business having no connection with this state. *Albertson's, Inc. v. State*, Dep't of Revenue, 106 Idaho 810, 683 P.2d 846 (1984).

The plain language of § 63-3024 and a former version of this section when taken together does limit the imposition of the tax as it pertains to nonresidents to that taxpayer's Idaho source income and then reduces the tax so imposed by the application of a former version of this section by the proportion that the taxpayer's Idaho source adjusted gross income bears to that taxpayer's total adjusted gross income. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

The plain meaning of a former version of this section provides for a reduction or diminution of the tax imposed by § 63-3024; the amount of reduction is to be to that portion that the taxpayer's Idaho adjusted gross income bears to the taxpayer's total adjusted gross income, which would result in a fraction by which the tax imposed by § 63-3024 would be computed; the Idaho earned adjusted gross income would represent the numerator and the total taxpayer's adjusted gross income would represent the denominator. *Moses v. Idaho State Tax Comm'n*, 118 Idaho 676, 799 P.2d 964 (1990).

Nonresidents' Income.

—On Call All Year.

The denominator of the statutory allocation formula used to determine how much of a

nonresident's income is allocable to Idaho sources, where the nonresident taxpayer is on call 365 days a year, should be the days in which he actually performs services for his employer, and not all of the 365 days in which he might theoretically have been asked to perform services. *Hamilton v. Tax Commis-* sion, 119 Idaho 552, 808 P.2d 1297 (1991).

Unitary Business.

Whether a number of business operations having common ownership constitute a single or unitary business or several separate businesses for tax purposes depends upon whether they are of mutual benefit to one another and on whether each operation is dependent on or contributory to others. This qualification, though not directly stated by the statute's literal language, is required by the theory underlying apportionment statutes, i.e., that the business income of a unitary business operating in several states cannot be precisely identified with particular states, and by the constitutional requirement that there must be some minimal connection between the interstate business activities generating the income and the state seeking to tax that income. *Albertson's, Inc. v. State*, Dep't of Revenue, 106 Idaho 810, 683 P.2d 846 (1984).

It was appropriate to treat the income of a Texas corporation which was a wholly-owned subsidiary of a Delaware corporation based in Idaho, as income of the parent corporation, subject to apportionment under this section, since the two corporations constituted a "unitary business." *Albertson's, Inc. v. State*, Dep't of Revenue, 106 Idaho 810, 683 P.2d 846 (1984).

RESEARCH REFERENCES

A.L.R. — Protection of out-of-state sellers from state income tax by Public Law 86-272 (15 U.S.C.A. §§ 381 to 384). 182 A.L.R. Fed. 291.

63-3027. Computing Idaho taxable income of multistate or unitary corporations. — The Idaho taxable income of any multistate or unitary corporation transacting business both within and without this state shall be computed in accordance with the rules set forth in this section:

(a) As used in this section, unless the context otherwise requires:

(1) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations. Gains or losses and dividend and interest income from stock and securities of any foreign or domestic corporation shall be presumed to be income from intangible property, the acquisition, management, or disposition of which constitutes an integral part of the taxpayer's trade or business; such presumption may only be overcome by clear and convincing evidence to the contrary.

(2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(3) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(4) "Nonbusiness income" means all income other than business income.

(5) "Sales" means all gross receipts of the taxpayer not allocated under subsections (d) through (h) of this section.

(6) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) Any taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion such net income as provided in this section.

(c) For purposes of allocation and apportionment of income under this section, a taxpayer is taxable in another state if:

(1) In that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(d) Rents and royalties from real or tangible personal property, capital gains interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (e) through (h) of this section. Allocable nonbusiness income shall be limited to the total nonbusiness income received which is in excess of any related expenses which have been allowed as a deduction during the taxable year. In the case of allocable nonbusiness interest or dividends, related expenses include interest on indebtedness incurred or continued to purchase or carry assets on which the interest or dividends are nonbusiness income.

(e)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state, or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(f)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) The property had a situs in this state at the time of the sale, or
- (ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state, unless such gains and losses constitute business income as defined in this section.

(g) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state unless such interest or dividends constitute business income as defined in this section.

(h)(1) Patent and copyright royalties are allocable to this state:

- (i) If and to the extent that the patent or copyright is utilized by the payer in this state, or
- (ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patent product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(i)(1) Notwithstanding the election allowed in article III.1 of the multistate tax compact enacted as section 63-3701, Idaho Code, all business income shall be apportioned to this state under subsection (j) of this section by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus two (2) times the sales factor, and the denominator of which is four (4), except as provided in paragraph (2) of this subsection.

(2) If a corporation, or a parent corporation of a combined group filing a combined report under sections 63-3027 and 63-3701, Idaho Code, is an electrical corporation as defined in section 61-119, Idaho Code, or is a telephone corporation as defined in section 62-603, Idaho Code, all business income of the corporation shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

(j)(1) In the case of a corporation or group of corporations combined under subsection (t) of this section, Idaho taxable income or loss of the corporation or combined group shall be determined as follows:

(i) From the income or loss of the corporation or combined group of corporations, subtract any nonbusiness income, and add any nonbusiness loss, included in the total,

(ii) Multiply the amounts determined under paragraph (1)(i) of this subsection by the Idaho apportionment percentage defined in subsection (i) of this section, taking into account, where applicable, the property, payroll and sales of all corporations, wherever incorporated, which are included in the combined group. The resulting product shall be the amount of business income or loss apportioned to Idaho.

(2) To the amount determined as apportioned business income or loss under paragraph (1)(ii) of this subsection, add nonbusiness income allocable entirely to Idaho under the provisions of this section or subtract nonbusiness loss allocable entirely to Idaho under this section. The resulting sum is the Idaho taxable income or loss of the corporation.

(3) In the case of a corporation not subject to subsection (t) of this section, the income or loss referred to in paragraph (1)(i) of this subsection, shall be the taxable income of the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code.

(k) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(l) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(m) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the state tax commission may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(n) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(o) Compensation is paid in this state if:

(1) The individual's service is performed entirely within the state; or

- (2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- (3) Some of the service is performed in the state and:
 - (i) The base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or
 - (ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
- (p) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.
- (q) Sales of tangible personal property are in this state if:
 - (1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale, or
 - (2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and:
 - (i) The purchaser is the United States government, or
 - (ii) The taxpayer is not taxable in the state of the purchaser.
- (r) Sales, other than sales of tangible property, are in this state, if:
 - (1) The income-producing activity is performed in this state; or
 - (2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.
- (s) If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the state tax commission may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
 - (1) Separate accounting, provided that only that portion of general expenses clearly identifiable with Idaho business operations shall be allowed as a deduction;
 - (2) The exclusion of any one (1) or more of the factors;
 - (3) The inclusion of one (1) or more additional factors which will fairly represent the taxpayer's business activity in this state; or
 - (4) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (t) For purposes of this section and sections 63-3027B through 63-3027E, Idaho Code, the income of two (2) or more corporations, wherever incorporated, the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners, when necessary to accurately reflect income, shall be allocated or apportioned as if the group of corporations were a single corporation, in which event:
 - (1) The Idaho taxable income of any corporation subject to taxation in this state shall be determined by use of a combined report which includes the income, determined under subparagraph (2) of this subsection, of all corporations which are members of a unitary business, allocated and

apportioned using apportionment factors for all corporations included in the combined report and methods set out in this section. The use of a combined report does not disregard the separate corporate identities of the members of the unitary group. Each corporation which is transacting business in this state is responsible for its apportioned share of the combined business income plus its nonbusiness income or loss allocated to Idaho, minus its net operating loss carryover or carryback.

(2) The income of a corporation to be included in a combined report shall be determined as follows:

(i) For a corporation incorporated in the United States or included in a consolidated federal corporation income tax return, the income to be included in the combined report shall be the taxable income for the corporation after making appropriate adjustments under the provisions of section 63-3022, Idaho Code;

(ii) For a corporation incorporated outside the United States, but not included in subsection (t)(2)(i) of this section, the income to be included in the combined report shall be the net income before income taxes of such corporation stated on the profit and loss statements of such corporation which are included within the consolidated profit and loss statement prepared for the group of related corporations of which the corporation is a member, which statement is prepared for filing with the United States securities and exchange commission. If the group of related companies is not required to file such profit and loss statement with the United States securities and exchange commission, the profit and loss statement prepared for reporting to shareholders and subject to review by an independent auditor may be used to obtain net income before income taxes. In the alternative, and subject to reasonable substantiation and consistent application by the group of related companies, adjustments may be made to the profit and loss statements of the corporation incorporated outside the United States, if necessary, to conform such statements to tax accounting standards as required by the Internal Revenue Code as if such corporation were incorporated in the United States and required to file a federal income tax return, subject to appropriate adjustments under the provisions of section 63-3022, Idaho Code; and

(iii) If the income computation for a group under paragraphs (i) and (ii) of this subsection results in a loss, such loss shall be taken into account in other years, subject to the provisions of subsections (b) and (c) of section 63-3022, Idaho Code.

(u) If compensation is paid in the form of a reasonable cash fee for the performance of management services directly for the United States government at the Idaho national laboratory or any successor organization, separate accounting for that part of the business activity without regard to other activity of the taxpayer in the state of Idaho or elsewhere shall be required; provided that only that portion of general expenses clearly identifiable with Idaho business operations of that activity shall be allowed as a deduction. [1959, ch. 299, § 27, p. 613; am. 1961, ch. 328, § 10, p. 622; am. 1965, ch. 254, § 1, p. 639; am. 1969, ch. 319, § 9, p. 982; am. 1972, ch.

398, § 5, p. 1149; am. 1975, ch. 32, § 1, p. 52; am. 1979, ch. 250, § 1, p. 654; am. 1985, ch. 114, § 2, p. 233; am. 1993, ch. 284, § 3, p. 958; am. 1994, ch. 247, § 2, p. 777; am. 1994, ch. 301, § 1, p. 948; am. 1995, ch. 111, § 27, p. 347; am. 1998, ch. 42, § 5, p. 175; am. 2007, ch. 10, § 2, p. 10.]

STATUTORY NOTES

Cross References. — Penalties in general, § 63-3075.

Responsibility for payment of corporate taxes and penalties, § 63-3078.

Amendments. — The 2007 amendment, by ch. 10, deleted “engineering” following “Idaho national” and inserted “or any successor organization” following “laboratory” in subsection (u).

Legislative Intent. — Section 1 of S.L. 1985, ch. 114 read: “DECLARATION OF INTENT. It is not the intent of the legislature by adoption of this legislation to express any intent as to the construction of prior law or its application to issues or disputes existing pursuant to such prior law before judicial or administrative tribunals.”

Compiler's Notes. — Section 2 of S.L. 1965, ch. 254 read: “The provisions of this amendatory act are hereby declared to be separable and if any provision of this act or the application of such provision is declared invalid for any reason such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates. — Section 3 of S.L. 1965, ch. 254 provided the act should take effect for taxable years commencing on and after January 1, 1965.

Section 7 of S.L. 1993, ch. 284 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to

January 1, 1993; provided however, that by written election filed by a taxpayer with the state tax commission, Sections 1 through 3 of this act shall apply to such taxpayer for all tax years beginning prior to January 1, 1993, as to which the period of limitations for assessment and collection of tax has not expired.” Approved March 31, 1993.

Section 7 of S.L. 1994, ch. 247 provides: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a written election provided in Section 7, Chapter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had not expired on the date the election was filed and had not expired on January 1, 1994.”

Section 2 of S.L. 1994, ch. 301, declared an emergency and provided this act shall be in full force and effect on and after March 31, 1994, and retroactively to January 1, 1994, and shall first apply to taxable years commencing on and after that date. Approved March 31, 1994.

Section 6 of S.L. 1998, ch. 42 declared an emergency and provided that this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

JUDICIAL DECISIONS

ANALYSIS

Alternative apportionment.
Construction contract.
Dividends.
Factors affecting allocation of income.
Foreign corporation.
Investment tax credit.
—Physical presence of property.
Legislative intent.
Nonresident.
Rule application.
Unitary business.

Alternative Apportionment.

Idaho tax commission's motion for summary judgment was properly granted in a

case involving corporate taxation because the commission met its burden of showing that the standard apportionment formula did not

accurately reflect the business activities of a taxpayer inside of Idaho, and the double counting of certain sales constituted an "unusual fact situation" under Idaho Tax Comm'n R. 27, 4.18; an alternative apportionment formula that excluded certain sales was upheld as appropriate. *Union Pac. Corp. v. Idaho State Tax Comm'n*, 139 Idaho 573, 83 P.3d 116 (2004).

Construction Contract.

A contract for a taxpayer to clean up and remediate hazardous waste was not considered a long-term construction contract and, thus, the value of the taxpayer's construction costs would not should be considered when apportioning income to Idaho. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 134 P.3d 641 (2006).

Dividends.

Dividends received by a taxpaying corporation from a domestic corporation whose income producing activities were for the most part outside the state were taxable by this state. *Futura Corp. v. State Tax Comm'n*, 92 Idaho 288, 442 P.2d 174 (1968).

Business income was defined as income arising from the transactions and activity in the regular course of the taxpayer's trade or business or income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitute integral or necessary parts of the taxpayer's trade or business operations, and since the trial court only considered the first definition in determining whether the taxpayer's income from stock dividends related to the mining of soda ash constituted "business income," remand was required to determine whether second definition applied. *Union Pac. Corp. v. State Tax Comm'n*, 136 Idaho 34, 28 P.3d 375 (2001).

Factors Affecting Allocation of Income.

A resident of Washington, deriving his income from wages as conductor on a railroad, six miles of which was in Idaho and 141 miles of which was in Washington, properly allocated his income between Idaho and Washington, based upon the respective mileage and time spent by the taxpayer in the respective states. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

Under subsection (r), the state tax commission was entitled to deviate from the income apportionment provisions of this section in cases where those provisions did not fairly represent the extent of the taxpayer's business activity in Idaho and since taxpayer's sale of accounts receivable included in "sales factor" of apportionment formula did not accurately reflect the taxpayer's business activity in Idaho, remand was permissible to use

an alternate formula that did reflect the taxpayer's business activity. *Union Pac. Corp. v. State Tax Comm'n*, 136 Idaho 34, 28 P.3d 375 (2001).

Trial court did not err in holding that the taxpayer's proceeds from the sale of accounts receivables were "sales" pursuant to subsection (a)(5) and were properly includable in the "sales factor" when apportioning income to Idaho because the state tax commission's answers to the taxpayer's requests for admission conceded that the transaction was a sale, but inclusion of that item in the sales factor caused the apportionment to unfairly reflect how the taxpayer earned its income in Idaho, and thus, remand was required to consider apportionment alternative. *Union Pac. Corp. v. State Tax Comm'n*, 136 Idaho 34, 28 P.3d 375 (2001).

In a case involving corporate taxation, a district court properly analyzed all three relevant factors in determining whether or not the standard apportionment formula fairly represented a taxpayer's income; the case was proper for alternative apportionment based on the district court's finding that the sales factor caused a per se unfair representation of the taxpayer's Idaho income. *Union Pac. Corp. v. Idaho State Tax Comm'n*, 139 Idaho 573, 83 P.3d 116 (2004).

Foreign Corporation.

The state of Idaho may not constitutionally include within the taxable income of a nondomiciliary parent corporation doing some business in Idaho a portion of intangible income (such as dividend and interest payments, as well as capital gains from the sale of stock) that the parent receives from subsidiary corporations having no other connection with the state. *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 102 S. Ct. 3103, 73 L. Ed. 2d 787 (1982).

The world-wide unitary income of a foreign subsidiary, which is not "taxable income" under 26 U.S.C. § 63, may not be combined with the unitary business income of a domestic corporation and its subsidiaries in order to compute the apportionable amount of "Idaho taxable income" for purposes of this section, unless the foreign source income is also included in the definition of taxable income under the provisions of § 63-3022. *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 820 P.2d 1206 (1991).

Foreign corporation who leased railroad cars to various railroads operating within state but conducted no business transactions or activities in state, derived no "business income" from the presence of its cars in state. *TTX Co. v. Idaho State Tax Comm'n*, 128 Idaho 483, 915 P.2d 713 (1996).

Investment Tax Credit.

Where railroad contended on appeal that subsection (s) of this section formed the basis

upon which the trial court should have rejected the three part formula set out in subsections (i) through (o) of this section, which provide the method for determining what property qualifies for investment tax credit, the appeals court held, on de novo review, that because the stipulation between the railroad and the Idaho state tax commission contained no analysis of the allocation and apportionment provisions provided by this section, and that because the limited facts stipulated to by the parties contained nothing sufficient to raise an issue of fact as to whether the three part formula fairly represented the railroad's activity in the state, it was proper for the district court to deny the railroad's motion for summary judgment and to grant summary judgment in favor of the Commission. *Burlington N., Inc. v. Idaho State Tax Comm'n*, 126 Idaho 645, 889 P.2d 79 (1995).

—Physical Presence of Property.

Railroads wishing to claim an Idaho investment tax credit for rolling stock and moveable property did not have to show that the "qualified investment" (or, the property acquired) was physically present in Idaho during the taxable years at issue, *aff'd*, 126 Idaho 645, 889 P.2d 79 (1995), holding that the situs allocation provisions of § 63-3027(i) through (o) were the proper basis for determining what property qualified for an investment tax credit. *Burlington N., Inc. v. Idaho State Tax Comm'n*, 121 Idaho 808, 828 P.2d 837 (1992).

Legislative Intent.

Allocation of income of nonresident taxpayer on basis of mileage of run within state was proper where nonresident worked for railroad on daily run from town within state to town outside of state as intent of the legislature was to tax only the amount of income or personal services performed in state and derived from state sources. *Gee v. West*, 90 Idaho 173, 409 P.2d 116 (1965).

Nonresident.

A practical reading of this section, § 63-3024 and § 63-3027A indicates that a nonresident individual should compute his taxes pursuant to § 63-3027A, not this section. *Preston v. Idaho State Tax Comm'n*, 131 Idaho 502, 960 P.2d 185 (1998).

Rule Application.

Idaho Tax Comm'n R. 27, 4.18 does not alter § 63-3027 in any way, but operates as an internal guideline for the commission. *Union Pac. Corp. v. Idaho State Tax Comm'n*, 139 Idaho 573, 83 P.3d 116 (2004).

Unitary Business.

A definition of "unitary business" that would permit nondomiciliary states to apportion and tax dividends where the business activities of the dividend payor have nothing to do with the activities of the recipient in the taxing state cannot be accepted consistently with due process standards. *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 102 S. Ct. 3103, 73 L. Ed. 2d 787 (1982).

Idaho's proposal that corporate purpose should define unitary business and that intangible income should be considered a part of a unitary business if the intangible property (the shares of stock) is "acquired, managed or disposed of for purposes relating or contributing to the taxpayer's business" would destroy the very concept of defining unitary business, because when pressed to its logical limit, this conception of the "unitary business" limitation becomes no limitation at all. *ASARCO, Inc. v. Idaho State Tax Comm'n*, 458 U.S. 307, 102 S. Ct. 3103, 73 L. Ed. 2d 787 (1982).

Subsection (s) prohibits life insurance companies exempt from the state income tax from filing combined returns with members of their unitary group. *AIA Servs. Corp. v. Idaho State Tax Comm'n*, 136 Idaho 184, 30 P.3d 962 (2001).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 183-190.

A.L.R. — Validity of municipal ordinance imposing income tax or license upon nonresidents employed in taxing jurisdiction (commuter tax). 48 A.L.R.3d 343.

State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

What constitutes trade or business under Internal Revenue Code (U.S.C.A. Title 26). 161 A.L.R. Fed. 245.

63-3027A. Computing Idaho taxable income of corporations not subject to section 63-3027, Idaho Code. — The Idaho taxable income of any corporation transacting business in this state which is not subject to the provisions of section 63-3027, Idaho Code, shall be computed by making appropriate adjustments under the provisions of section 63-3022, Idaho Code, to the taxable income of the taxpayer. [I.C., § 63-3027A, as added by 1995, ch. 111, § 29, p. 347.]

STATUTORY NOTES

Prior Laws. — Former § 63-3027A, which comprised I.C., § 63-3027A, as added by 1975, ch. 32, § 2, p. 52; am. 1976, ch. 89, § 1, p. 303; am. 1977, ch. 86, § 1, p. 176; am. 1981,

ch. 135, § 1, p. 238; am. 1985, ch. 27, § 1, p. 47; am. 1987, ch. 149, § 2, p. 295, was repealed by S.L. 1988, ch. 22, § 1.

JUDICIAL DECISIONS

ANALYSIS

Nonresident.
Residency.

Nonresident.

A practical reading of this section, § 63-3024 and § 63-3027 indicates that a nonresident individual should compute his taxes pursuant to this section, not § 63-3027. *Preston v. Idaho State Tax Comm'n*, 131 Idaho 502, 960 P.2d 185 (1998).

state at the time of receipt of termination wage payment, along with their intent to adopt it as a domicile in the near future, did not effect a change in domicile for income tax purposes; physical presence in a new locality and the intent to make the locality a home must concur. *Pratt v. State Tax Comm'n*, 128 Idaho 883, 920 P.2d 400 (1996).

Residency.

Taxpayers' physical presence in another

63-3027B. Water's-edge election. — (a) Notwithstanding the provisions of subsections (s) and (t) of section 63-3027, Idaho Code, a qualified taxpayer, as defined in paragraph (3) of subsection (b) of this section whose income is subject to the tax imposed under this chapter, may elect to determine its income derived from or attributable to sources within this state pursuant to a water's-edge election in accordance with the provisions of this chapter, as modified by sections 63-3027B through 63-3027E, Idaho Code. A taxpayer who makes a water's-edge election shall take into account the income and apportionment factors of only affiliated corporations in a unitary relationship with the taxpayer, other than corporations filing elections under section 936 of the Internal Revenue Code, and which either file a federal income tax return under the Internal Revenue Code or are included in a federal consolidated return.

(b) For purposes of this section:

(1) The phrase "over fifty percent (50%) of the voting stock directly or indirectly owned or controlled" shall be substituted for the phrase "at least eighty percent (80%)" each place it appears in section 1504 of the Internal Revenue Code.

(2) Any combined return shall include only corporations the voting stock of which is more than fifty percent (50%) owned directly or indirectly by a common owner or owners.

(3) A "qualified taxpayer" is a corporation which files, with the state income tax return on which the water's-edge election is made, a consent to the reasonable production of documents within the taxing jurisdiction. The consent shall remain in effect so long as the water's-edge election is in effect.

(4) "Water's-edge combined group" shall mean all corporations or entities properly includable in the election of a taxpayer in subsection (a) of this section.

(5) The only income of a foreign sales corporation to be taken into account shall be the income subject to federal taxation, taking into account the provisions of section 921 of the Internal Revenue Code.

(c) A water's-edge election may be disregarded, and the income of the taxpayer determined without regard to the provisions of this section pursuant to those conditions which may be required by the state tax commission under subsection (b) of section 63-3027C, Idaho Code, if any corporation fails to comply with:

(1) The domestic disclosure spreadsheet filing requirements defined in section 63-3027E, Idaho Code; or

(2) This state's legal and procedural requirements. [I.C., § 63-3027B, as added by 1986, ch. 342, § 1, p. 846; am. 1993, ch. 284, § 4, p. 958; am. 1994, ch. 247, § 3, p. 777; am. 2000, ch. 26, § 4, p. 45.]

STATUTORY NOTES

Federal References. — Sections 921, 936 and 1504 of the Internal Revenue Code, referred to in this section, are compiled as 26 U.S.C., §§ 921, 936 and 1504.

Effective Dates. — Section 7 of S.L. 1994, ch. 247, provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a

written election provided in Section 7, Chapter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had not expired on the date the election was filed and had not expired on January 1, 1994."

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

JUDICIAL DECISIONS

Cited in: J.R. Simplot Co. v. Idaho State Tax Comm'n, 120 Idaho 849, 820 P.2d 1206 (1991).

63-3027C. Election is binding — Treatment of dividends. — (a) A water's-edge election shall be made in the original return for a year and shall be binding for all years thereafter, except as follows:

(1) If, in the future, the United States supreme court or the supreme court of the state of Idaho rules that there is a state or federal constitutional right for a group of corporations to use the worldwide unitary method, a water's-edge combined group of corporations may, without permission of the tax commission, change its future filing to the worldwide unitary method.

(2) Any changes to use of the water's-edge method or any other changes beyond those described in paragraph (1) of this subsection may only occur with the written permission of the tax commission.

(3) No water's-edge election shall be made for an income year beginning prior to the operative date of sections 63-3027B through 63-3027E, Idaho Code.

(b) When disregarding an election or granting a change of election, the tax commission shall impose conditions which are necessary to prevent the

avoidance of tax or to clearly reflect income for the period the election was made.

(c) For purposes of this section:

(1) Dividends received from payors incorporated outside the fifty (50) states and District of Columbia, to the extent taxable, shall be treated as income subject to apportionment.

(2) The income of corporations filing elections under section 936 of the Internal Revenue Code shall be deemed dividends received from payors incorporated outside the fifty (50) states and District of Columbia.

(3) Eighty-five per cent (85%) of all dividends described in subsection (c)(1) or (c)(2) of this section shall be excluded from income subject to apportionment.

(4) The dividends subject to apportionment shall be in lieu of any expenses attributable to such dividend income.

(5) Any actual dividend received from a corporation filing an election under section 936 of the Internal Revenue Code shall be eliminated from income.

(d) Any dividend from any payor required to be combined under the water's-edge election shall be eliminated from the calculation of apportionable income. Dividends received from a corporation described in section 922 of the Internal Revenue Code (defining "FSC") will be treated as follows:

(1) Dividends received from an FSC will be eliminated in the proportion that FSC federal taxable income for the year, out of which the dividend was paid, bears to the total FSC income before taxes for such year.

(2) The portion of FSC dividend not eliminated under paragraph (1) of this subsection will be subject to the eighty-five per cent (85%) exclusion provided for in subsection (c)(3) of this section.

(e) For purposes of this section:

(1) Amounts included in income by reference to subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and District of Columbia;

(2) Amounts included in income under part VI of subchapter P of chapter 1 of the Internal Revenue Code shall constitute dividends from payors outside the fifty (50) states and the District of Columbia; and

(3) Deemed distributions defined by Section 78 of the Internal Revenue Code shall be excluded from the income of the water's-edge combined group. [I.C., § 63-3027C, as added by 1986, ch. 342, § 1, p. 846; am. 1993, ch. 284, § 5, p. 958; am. 1994, ch. 247, § 4, p. 777; am. 1997, ch. 59, § 1, p. 109.]

STATUTORY NOTES

Federal References. — Section 936 of the Internal Revenue Code referred to in subsection (c)(5), § 922, referred to in subsection (d), and § 78, referred to in subsection (e)(3), are compiled as 26 U.S.C. §§ 936, 922, and 78 respectively.

Subpart F of part III of subchapter N of chapter 1 of the Internal Revenue Code, referred to in subsection (e)(1), is compiled as 26 U.S.C., § 951 et seq.

Part VI of subchapter P of chapter 1 of the Internal Revenue Code, referred to in subsec-

tion (e)(2) of this section, is compiled as 26 U.S.C., §§ 1291 — 1297.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 7 of S.L. 1994, ch. 247, provides: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a written election provided in Section 7, Chap-

ter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had not expired on the date the election was filed and had not expired on January 1, 1994."

Section 2 of S.L. 1997, ch. 59 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1997. Approved March 13, 1997.

63-3027D. Presumptions and burdens of proof. — (a) A qualified taxpayer and its affiliates shall be presumed to be a part of a unitary business and all income of that business shall be presumed to be apportionable business income if a valid water's-edge election has been made, except as provided in subsections (c) and (d) of section 63-3027C, Idaho Code.

(b) A taxpayer shall have the burden of proof regarding the issue of whether or not a corporation is a member of a water's-edge combined group. [I.C., § 63-3027D, as added by 1986, ch. 342, § 1, p. 846.]

63-3027E. Operative dates. — (a) Sections 63-3027B through 63-3027E, Idaho Code, shall be operative for the computation of taxes for the earlier of either of the following:

(1) Taxable years beginning on or after January 1, 1988.

(2) Taxable years beginning on or after January 1 of the year after the year in which the board of examiners, upon advice of the attorney general, certifies to the tax commission that action has been taken by the United States, whether by statute, regulation, executive order, or any other means as may be appropriate, to comply substantially with the following:

(A) A requirement that any corporation required to file a United States tax return or which could be included in a consolidated federal tax return be required to file with the Internal Revenue Service a domestic disclosure spreadsheet if its payroll, property, or sales in a foreign country exceeds one million dollars (\$1,000,000). The spreadsheet shall provide for full disclosure as to the income reported to each state, the state tax liability, and the method used for apportioning or allocating income to the states, and any other information as provided for by regulations as may be necessary to determine properly the amount of taxes due to each state and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners.

(B) That the information filed pursuant to paragraph (2)(A) of this subsection will be available to qualified states. A "qualified state" is any state that does not require the use of the worldwide unitary method of taxation except in circumstances substantially similar to those authorized in subsection (c) of section 63-3027B, Idaho Code.

(C) That qualified states are authorized access to all material developed by the Internal Revenue Service in its examination of multinational operations.

(b) If sections 63-3027B through 63-3027E, Idaho Code, become operative pursuant to paragraph (1) of subsection (a) of this section, the tax commission may require, and taxpayers described in this subsection must file, no later than six months after filing the Idaho income tax return, a spreadsheet to provide disclosure as to the income reported for the year to the other states that require unitary combined reporting, the tax liability for each such state, the method used for allocating or apportioning income to such states, the property, payroll, and destination sales of the water's-edge corporate group in each state, and to identify the water's-edge corporate group and those of its affiliates of which more than twenty per cent (20%) of the voting stock is directly or indirectly owned or controlled by a common owner or owners. The provisions of this subsection shall apply only to corporations which both make a water's-edge election and have during the taxable year, payroll, property or sales in a foreign country which exceeds one million dollars (\$1,000,000). Notwithstanding the requirement to file a spreadsheet in any tax year, a taxpayer may forego filing such a spreadsheet by submitting to the state tax commission a written declaration of its intention to forego filing such spreadsheet for such year. In the event such declaration is filed in any tax year, no spreadsheet shall be required of such taxpayer and the percentage to be applied under section 63-3027C(c)(3) for such year shall be eighty per cent (80%) rather than eighty-five per cent (85%). [I.C., § 63-3027E, as added by 1986, ch. 342, § 1, p. 846; am. 1993, ch. 284, § 6, p. 958; am. 1994, ch. 247, § 5, p. 777; am. 1997, ch. 243, § 1, p. 706.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1993, ch. 284 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993; provided however, that by written election filed by a taxpayer with the state tax commission, Sections 1 through 3 of this act shall apply to such taxpayer for all tax years beginning prior to January 1, 1993, as to which the period of limitations for assessment and collection of tax has not expired." Approved March 31, 1993.

Section 7 of S.L. 1994, ch. 247, provides:

"An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a written election provided in Section 7, Chapter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had not expired on the date the election was filed and had not expired on January 1, 1994." Approved March 30, 1994.

63-3028. Deduction of federal income taxes — Corporations. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised (1959, ch. 299, § 28, p. 613; am.

1961, ch. 328, § 11, p. 622; am. 1963, ch. 339, § 4, p. 971; am. 1965, ch. 316, § 4, p. 880),

was repealed by S.L. 1982, ch. 203, § 2, effective January 1, 1983.

63-3029. Credit for income taxes paid another state. — (1) A resident individual shall be allowed a credit against the tax otherwise due under this chapter for the amount of any income tax imposed on the individual, an S corporation, partnership, limited liability company, or trust of which the individual is a shareholder, partner, member, or beneficiary (to the extent attributable to the individual as a result of the individual's share of the S corporation's, partnership's, limited liability company's or trust's taxable income in another state), for the taxable year by another state on income derived from sources therein while domiciled in Idaho and that is also subject to tax under this chapter.

(2) For purposes of this section, "state" shall include any state of the United States, the District of Columbia, or any possession or territory of the United States.

(3)(a) Except as provided in subsection (3)(b), the credit provided under this section shall not exceed the proportion of the tax otherwise due under this chapter that the amount of the adjusted gross income of the taxpayer derived from sources in the other state as modified by this chapter bears to the adjusted gross income of the taxpayer as modified by this chapter. This limitation applies to all individuals.

(b) When tax is paid to another state on income of an S corporation, partnership, limited liability company, or trust, the limitation calculated in subsection (3)(a) with respect to that income shall be based on the proportion that the individual taxpayer's share of the entity's taxable income correctly reported to the other state under the laws of the other state bears to the individual's adjusted gross income. This limitation shall apply whether the tax is paid to the other state by the individual or by the S corporation, partnership, limited liability company or trust.

(c) The credit provided under this section shall further be limited to the tax paid to the other state.

(4) To substantiate the credit allowed under this section, the state tax commission may require a copy of any receipt showing payment of income taxes to the other state or a copy of any return or returns filed with such other state, or both.

(5) No credit allowed under this section shall be applied in calculating tax due under this chapter if the tax upon which the credit is based has been claimed as a deduction, unless the tax is restored to income on the Idaho return.

(6) The credit shall not be allowed if such other state allows a credit against taxes imposed by such state for taxes paid or payable under this act.

(7) For purposes of this section an income tax imposed on an S corporation, partnership, limited liability company, or trust includes:

(a) A direct tax imposed upon the income for the taxable year of the S corporation, partnership, limited liability company or trust; and

(b) An excise or franchise tax that is measured by the income for the taxable year of the S corporation, partnership, limited liability company, or trust.

(8) For purposes of subsection (7) of this section, an excise or franchise tax is "measured by income" only if the statute imposing the excise or franchise tax provides that the base for the tax:

(a) Includes:

- (i) Revenue from sales;
- (ii) Revenue from services rendered; and
- (iii) Income from investments; and

(b) Permits a deduction for the cost of goods sold and the cost of services rendered.

(9) A part-year resident is entitled to a credit, determined in the manner prescribed by the state tax commission, for income taxes paid to another state in regard to income which is:

- (a) Earned while the taxpayer is domiciled in this state; and
- (b) Subject to tax in such other state.

(10) If the interest in an S corporation, partnership, or limited liability company was held for less than the entire taxable year, the share attributable to the individual shall be allocated in the same manner as for federal purposes. [1959, ch. 299, § 29, p. 613; am. 1961, ch. 328, § 12, p. 622; am. 1970, ch. 222, § 6, p. 621; am. 1975, ch. 106, § 1, p. 216; am. 1980, ch. 12, § 1, p. 25; am. 1982, ch. 8, § 1, p. 11; am. 1995, ch. 111, § 30, p. 347; am. 1996, ch. 422, § 1, p. 1446; am. 1998, ch. 10, § 1, p. 108; am. 2007, ch. 191, § 1, p. 562.]

STATUTORY NOTES

Cross References. — Part-year resident defined, § 63-3013A.

Amendments. — The 2007 amendment, by ch. 191, added the subsection (3)(a) designation, and therein added the exception at the beginning, and deleted, "whether the tax paid to the other state is paid by the individual or by an S corporation, partnership, limited liability company, or trust. Further, the credit shall not exceed the tax paid to the other state" from the end; and added subsections (3)(b) and (3)(c).

Compiler's Notes. — The words "this act" at the end of subsection (6) refer to S.L. 1959, ch. 299 § 63-3001.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

Section 2 of S.L. 1975, ch. 106 declared an emergency, and also provided that the act should take effect on and after its passage and

approval, and retroactive to January 1, 1975. Approved March 24, 1975.

Section 2 of S.L. 1982, ch. 8 declared an emergency and made the act effective retroactively to January 1, 1982. Approved February 18, 1982.

Section 2 of S.L. 1996, ch. 422 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to January 1, 1992. Approved March 21, 1996.

Section 2 of S.L. 1998, ch. 10 declared an emergency and provided that this shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved February 11, 1998.

Section 2 of S.L. 2007, ch. 191 declared an emergency and shall apply to all proceedings pending before the State Tax Commission, the Board of Tax Appeals or the courts of this state on the effective date of this act." Approved March 26, 2007.

JUDICIAL DECISIONS

Subsequent Credit.

Idaho state tax commission's decision to deny a credit to taxpayers for taxes paid on acquired stock in California in 1994 on their 1995 and 1996 Idaho tax returns was entitled to deference because the agency had the au-

thority to interpret § 63-3029, the interpretation was reasonable, and § 63-3029 did not treat the precise issue presented; moreover, the applicable rationales weighed in favor of deference. *Canty v. Idaho State Tax Comm'n*, 138 Idaho 178, 59 P.3d 983 (2002).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 549-552.

63-3029A. Income tax credit for charitable contributions — Limitation. — At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to a nonprofit corporation, fund, foundation, trust, or association organized and operated exclusively for the benefit of institutions of higher learning located within the state of Idaho, including a university related research park, to nonprofit private or public institutions of elementary, secondary, or higher education or their foundations located within the state of Idaho, to Idaho education public broadcast system foundations within the state of Idaho, to the Idaho state historical society or its foundation, to the Idaho commission for libraries and to public libraries or their foundations and library districts or their foundations located within the state of Idaho, and to nonprofit public or private museums or their foundations located within the state of Idaho.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars (\$100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or one thousand dollars (\$1,000), whichever is less.

For the purposes of this section, "institution of higher learning" means only an educational institution located within this state meeting all of the following requirements:

- (a) It maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are carried on.
- (b) It regularly offers education above the twelfth grade.
- (c) It is accredited by the northwest association of schools and colleges, or by the state board of education.

For the purposes of this section, a nonprofit institution of secondary or higher education means a private nonprofit secondary or higher educational institution located within the state of Idaho, which is accredited by the northwest association of schools and colleges, or by the state board of education. A nonprofit private institution of elementary education means a private nonprofit elementary educational institution located within the state of Idaho and approved by the state board of education. [I.C., § 63-3029A, as added by 1976, ch. 58, § 1, p. 198; am. 1977, ch. 249, § 1, p. 730; am. 1978, ch. 177, § 1, p. 406; am. 1984, ch. 286, § 14, p. 660; am. 1986, ch.

219, § 1, p. 557; am. 1987, ch. 304, § 1, p. 644; am. 1992, ch. 10, § 1, p. 16; am. 1994, ch. 211, § 1, p. 667; am. 1998, ch. 59, § 1, p. 216; am. 1999, ch. 361, § 1, p. 955; am. 2001, ch. 370, § 1, p. 1294; am. 2006, ch. 235, § 31, p. 701.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 235, substituted “commission for libraries” for “state library” in the introductory paragraph.

Effective Dates. — Section 2 of S.L. 1976, ch. 58 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 9, 1976.

Section 2 of S.L. 1978, ch. 177 declared an emergency and provided that the act should be in full force and effect on and after its approval retroactive to January 1, 1978. Approved March 20, 1978.

Section 15 of S.L. 1984, ch. 286 declared an emergency and made section 14 of the act effective retroactively to January 1, 1984. Approved April 6, 1984.

Section 2 of S.L. 1987, ch. 304 provided that the act should take effect on and after January 1, 1988.

Section 2 of S.L. 1992, ch. 10 read: “An emergency existing therefore, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1992.” Approved February 21, 1992.

Section 2 of S.L. 1998, ch. 59 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 17, 1998.

Section 2 of S.L. 2001, ch. 370 provided that the act should take effect on and after January 1, 2002.

OPINIONS OF ATTORNEY GENERAL

School districts are constitutionally prohibited from creating or aiding any private non-profit corporation and are not statutorily authorized to create public corporations; however, individuals acting in a private capacity may create a non-profit corporation for the purpose of soliciting and managing gifts exclusively in support of a public school system. Gifts to such a non-profit corporation would qualify for income tax credits provided by this section. OAG 86-13.

Law granting tax credit to a parent or

guardian who complies with state’s compulsory education law by means other than the public school system and without using public school resources by enrolling their child in a private non-sectarian school, a private sectarian school or through home schooling would probably be constitutional, for such tax credit can be claimed only by the parents and the fact that this section and § 63-3022, which provide more direct benefit to private schools have been accepted as constitutional. OAG 97-2.

63-3029B. Income tax credit for capital investment. — (1) At the election of the taxpayer there shall be allowed, subject to the applicable limitations provided herein as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to the sum of:

- (a) The tax credit carryovers; and
- (b) The tax credit for the taxable year.

(2) The maximum allowable amount of the credit for the current taxable year shall be three percent (3%) of the amount of qualified investments made during the taxable year.

(3) As used in this section “qualified investment” means certain property which:

- (a)(i) Is eligible for the federal investment tax credit, as defined in sections 46(c) and 48 of the Internal Revenue Code subject to the limitations provided for certain regulated companies in section 46(f) of

the Internal Revenue Code and is not a motor vehicle under eight thousand (8,000) pounds gross weight; or

(ii) Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and

(b) Is acquired, constructed, reconstructed, erected or placed into service after December 31, 1981; and

(c) Has a situs in Idaho.

(4)(a) For qualified investments placed in service in 2003 and thereafter, a taxpayer, other than a person whose rate of charge or rate of return, or both, is regulated or limited according to federal or state law, may elect, in lieu of the credit provided by this section, a two (2) year exemption from all taxes on personal property on the qualified investment. The exemption from personal property tax shall apply to the year the election is filed as provided in this section and the immediately following year. The election provided by this paragraph is available only to a taxpayer whose Idaho taxable income, before application of net operating losses carried back or forward, in the second preceding taxable year in which the investment is placed in service is negative.

(b) The election shall be made in the form prescribed by the state tax commission and shall include a specific description and location of all qualified investments placed into service and located in the jurisdiction of the assessing authority, a designation of the specific assets for which the exemption is claimed, and such other information as the state tax commission may require. The election must be made by including the election form with the listing of personal property required by section 63-302, Idaho Code, or, in the case of operating property assessed under chapter 4, title 63, Idaho Code, with the operator's statement required by section 63-404, Idaho Code. Once made the election is irrevocable. If no election is made, the election is not otherwise available. A copy of the election form must also be attached to the original income tax return due for the taxable year in which the claim was made.

(c) The state tax commission and the various county assessors are authorized to exchange information as necessary to properly coordinate the exemption provided in this subsection. Information disclosed to county officials under this subsection may be used only to determine the validity or amount of a taxpayer's entitlement to the exemption provided in this section, and is not otherwise subject to public disclosure as provided in section 9-340D, Idaho Code.

(d) In the event that an investment in regard to which the election under this subsection was made is determined by the state tax commission:

(i) To not be a qualified investment, or

(ii) To have ceased to qualify during the recapture period, or

(iii) To be otherwise not qualified for the election,

the taxpayer shall be subject to recapture of the property tax benefit.

(e) The benefit to be recaptured in subsection (4)(d) of this section shall be computed in the manner required in subsection (7) of this section and such recapture amount shall be subject to assessment in the same manner as a deficiency in tax under this chapter. For purposes of calculating the recapture, the property tax benefit shall be:

(i) In the case of locally assessed property located in a single county or nonapportioned centrally assessed property, the market value of exempted property times the average property tax levy for that county in the year or years for which the exemption was claimed.

(ii) In the case of other centrally assessed property and property located in more than one (1) county, the market value of exempted property times the average urban property tax levy of the state as determined by the state tax commission in each of the years for which the exemption was claimed.

(f) In the event that a recapture of the exemption is required under this subsection (4), the person claiming the exemption shall report the event to the state tax commission in the manner the state tax commission may by rule require. The report shall be due no later than the due date of that person's income tax return under this chapter for the taxable year in which the event occurs. The recapture amount is due and payable with the report. Any amount of recapture not paid is a deficiency within the meaning of section 63-3044, Idaho Code.

(g) All moneys collected by the state tax commission pursuant to this subsection, which amounts are continuously appropriated for this purpose, shall be deposited with the state treasurer and placed in the state refund account, as provided by section 63-3067, Idaho Code, to be remitted to the county within which the property was located that was not a qualified investment or ceased to qualify during the recapture period. The county shall distribute this remittance to all appropriate taxing districts based on the proportion each appropriate taxing district's levy is to the total of all the levies of the taxing districts for the tax code area where the property was located for each year the exemption was granted. If any taxing district is dissolved or disincorporated, the proportionate share of the remittance to be distributed to that taxing district shall be deposited in the county current expense fund.

(h) For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this subsection shall be treated as property tax revenue by taxing districts.

(5) Notwithstanding the provisions of subsections (1) and (2) of this section, the amount of the credit allowed shall not exceed fifty percent (50%) of the tax liability of the taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(6) If the sum of credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (5) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be an investment credit carryover to the fourteen (14) succeeding taxable years. In the case of a group of corporations filing a combined report under section 63-3027, Idaho Code, or sections 63-3027B through 63-3027E, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (5) of this section, instead of carried over. The entire amount of unused

credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the qualified investment property for which the unused credit was granted still maintains Idaho situs. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) Any recapture of the credit allowed by subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of the recapture period, shall be determined according to the applicable recapture provisions of the Internal Revenue Code. In the case of a unitary group of corporations, the increase in tax due to the recapture of investment tax credit must be reported by the member of the group who earned the credit regardless of which member claimed the credit against tax.

(8) For the purpose of determining whether property placed in service is a "qualified investment" as defined in subsection (3) of this section, the provisions of section 49 of the Internal Revenue Code shall be disregarded. "Qualified investment" shall not include any amount for which a deduction is allowed under section 179 of the Internal Revenue Code in computing taxable income.

(9) For purposes of this section, property has a situs in Idaho during a taxable year if it is used in Idaho at any time during the taxable year. Property not used in Idaho during a taxable year does not have a situs in Idaho in the taxable year during which the property is not used in Idaho or in any subsequent taxable year. No credit or carryover of credit is permitted under this section if the credit or carryover relates to property that does not have a situs in Idaho during the taxable year for which the credit or carryover is claimed. The Idaho situs of property must be established by records maintained by the taxpayer which are created reasonably contemporaneously with the use of the property.

(10) In the case of property used both in and outside Idaho, the taxpayer, electing to claim the credit provided in this section, must elect to compute the qualified investment in property with a situs in Idaho for all such investments first qualifying during that year in one (1), but only one (1), of the following ways:

(a) The amount of each qualified investment in a specific asset shall be separately computed based on the percentage of the actual use of the property in Idaho by using a measure of the use, such as total miles or total machine hours, that most accurately reflects the beneficial use during the taxable year in which it is first acquired, constructed, reconstructed, erected or placed into service; provided, that the asset is placed in service more than ninety (90) days before the end of the taxable year. In the case of assets acquired, constructed, reconstructed, erected or placed into service within ninety (90) days prior to the end of the taxable year in which the investment first qualifies, the measure of the use of that asset within Idaho for that year shall be based upon the percentage of use in Idaho during the first ninety (90) days of use of the asset;

(b) The investment in qualified property used both inside and outside Idaho during the taxable year in which it is first acquired, constructed,

reconstructed, erected or placed into service shall be multiplied by the percent of the investment that would be included in the numerator of the Idaho property factor determined pursuant to section 63-3027, Idaho Code, for the same year.

(11) Only for the purposes of subsections (3)(a) and (8) of this section, references to sections of the "Internal Revenue Code" mean the sections referred to as they existed in the Internal Revenue Code of 1986 prior to November 5, 1990. [I.C., § 63-3029B, as added by 1982, ch. 48, § 1, p. 72; am. 1987, ch. 319, § 1, p. 671; am. 1992, ch. 153, § 1, p. 459; am. 1993, ch. 2, § 1, p. 3; am. 1994, ch. 247, § 6, p. 777; am. 1995, ch. 94, § 1, p. 269; am. 1996, ch. 40, § 4, p. 103; am. 2000, ch. 457, § 1, p. 1430; am. 2000, ch. 479, § 5, p. 1651; am. 2001, ch. 270, § 6, p. 977; am. 2001, ch. 386, § 5, p. 1348; am. 2003, ch. 345, § 1, p. 923; am. 2004, ch. 204, § 1, p. 621; am. 2005, ch. 23, § 1, p. 61; am. 2006, ch. 195, § 2, p. 599.]

STATUTORY NOTES

Amendments. — This section was amended by two 2000 acts — ch. 457, § 1 and ch. 479, § 5, both effective January 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment by ch. 457, § 1, substituted "carryover" for "carry over" throughout the section; in subsection (5), substituted "fourteen (14)" for "seven (7)"; in subsection (9), inserted "(1)" following "one" in two places; and made minor stylistic changes throughout the section.

The 2000 amendment by ch. 479, § 5, substituted "carryover" for "carry over" throughout the section; in subsection (4), inserted "of this section" following "subsections (1) and (2), substituted "fifty percent (50%" for "forty-five percent (45%)"; in subsection (5), inserted "of this section" following "subsection (2)" in two places, inserted "of this section" following "subsection (4)"; in subsection (9), inserted "(1)" following "one" in two places; and made minor stylistic changes throughout the section.

This section was amended by two 2001 acts — ch. 270, § 6 and ch. 386, § 5, both effective January 1, 2001, which do not conflict and have been compiled together.

The 2001 amendment, by ch. 270, § 6, at the end of subsection (4) added "The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code."

The 2001 amendment, by ch. 386, § 5, divided former subdivision (3)(a) into present subdivisions (3)(a)(i) and (3)(a)(ii), at the end of present subdivision (3)(a)(i) inserted "or" following "pounds gross weight" and added present subdivision (3)(a)(ii) which reads: "Is qualified broadband equipment as defined in section 63-3029I, Idaho Code; and" and in subsection (6), substituted "the recapture pe-

riod" for "its useful life" following "prior to the close of the."

The 2006 amendment, by ch. 195, added present subsection (4)(f) and redesignated former subsections (4)(f) and (g) as (4)(g) and (h).

Federal References. — Sections 46 and 48 of the Internal Revenue Code, referred to in subdivision (3)(a)(i), are compiled as 26 U.S.C. §§ 46 and 48 and sections 49 and 179, referred to in subsection (8), are compiled as 26 U.S.C. §§ 49 and 179.

Compiler's Notes. — Section 16 of S.L. 2001, ch. 386, provided: "The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render the entire section invalid but not other sections of this act."

Effective Dates. — Section 2 of S.L. 1982, ch. 48 read: "This act shall be in full force and effect on and after January 1, 1983, and shall first apply to taxable years beginning on and after January 1, 1983, provided, however, that investments qualifying during taxable years commencing during calendar year 1982 shall be allowable credit provided by this act against taxes accruing during the taxable year commencing during calendar year 1983." Approved March 10, 1982.

Section 2 of S.L. 1987, ch. 319 declared an emergency and provided that the act should be in full force on and after its approval retroactive to January 1, 1986. Approved April 4, 1987.

Section 2 of S.L. 1992, ch. 153 read: "An emergency existing therefore, which emergency is hereby declared to exist, this act

shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1992. This act applies to credits and to carry-over of credits under § 63-3029B, Idaho Code, allowable for taxable years beginning on and after January 1, 1992, without regard to the taxable year during which an investment qualified for the Idaho investment tax credit." Approved April 2, 1992.

Section 2 of S.L. 1993, ch. 2 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993." Approved February 19, 1993.

Section 7 of S.L. 1994, ch. 247, declared an emergency and provided this act shall be in full force and effect on and after March 30, 1994, and retroactively to January 1, 1993, provided further that in regard to taxpayers that file a written election provided in Section 7, Chapter 284, Laws of 1993, for taxable years beginning prior to January 1, 1993, this act shall apply to such taxpayers for all taxable years as to which the period of limitations for assessment and collection of tax had

not expired on the date the election was filed and had not expired on January 1, 1994. Approved March 30, 1994.

Section 3 of S.L. 1995, ch. 94, declared an emergency and provided that this act shall be in full force and effect retroactively to January 1, 1995. Approved March 13, 1995.

Section 6 of S.L. 1996, ch. 40 declared an emergency and provided that the act would become effective retroactive to January 1, 1996.

Section 2 of S.L. 2000, ch. 457, declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 6 of S.L. 2000, ch. 479 declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 3 of S.L. 2004, ch. 204 declared an emergency retroactively to January 1, 2003. Approved March 23, 2004.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

JUDICIAL DECISIONS

Physical Presence of Property.

Railroads wishing to claim an Idaho investment tax credit for rolling stock and moveable property did not have to show that the "qualified investment" (or, the property acquired) was physically present in Idaho during the taxable years at issue. *Burlington N., Inc. v.*

Idaho State Tax Comm'n, 121 Idaho 808, 828 P.2d 837 (1992).

Cited in: *Burlington N., Inc. v. Idaho State Tax Comm'n*, 126 Idaho 645, 889 P.2d 79 (1995).

63-3029C. Income tax credit for certain charitable contributions

— **Limitation.** — At the election of the taxpayer, there shall be allowed, subject to the applicable limitations provided herein, as a credit against the income tax imposed by chapter 30, title 63, Idaho Code, an amount equal to fifty percent (50%) of the aggregate amount of charitable contributions made by such taxpayer during the year to the anchor house or its foundation, to the children's home society of Idaho, inc., to the Idaho youth ranch or its foundation, to kinderhaven or its foundation, to the women's and children's alliance or its foundation, to children's village, inc. or its foundation, to Idaho drug free youth, inc. or its foundation, to gem youth services or its foundation, to the hope house, inc. or its foundation, to the north Idaho children's home or its foundation, to the shepherd's home, inc. or its foundation, to a project safe place located within the state of Idaho, to the learning lab, inc. or its foundation, to a center for independent living located within the state of Idaho, to project P.A.T.C.H., planned assistance for troubled children, to a nonprofit substance abuse center licensed by the department of health and welfare, or to a nonprofit rehabilitation facility located within the state of Idaho or its foundation.

(1) In the case of a taxpayer other than a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed twenty percent (20%) of such taxpayer's total income tax liability imposed by section 63-3024, Idaho Code, for the year, or one hundred dollars (\$100), whichever is less.

(2) In the case of a corporation, the amount allowable as a credit under this section for any taxable year shall not exceed ten percent (10%) of such corporation's total income or franchise tax liability imposed by sections 63-3025 and 63-3025A, Idaho Code, for the year, or five hundred dollars (\$500), whichever is less.

(3) For the purposes of this section, "center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

(a) Is designed and operated within a local community by individuals with disabilities;

(b) Provides an array of independent living services and programs; and

(c) Is cross-disability.

(4) For the purposes of this section, "nonprofit rehabilitation facility" means only a facility that is accredited by the commission on accreditation of rehabilitation facilities or another accreditation organization recognized by the state of Idaho. [I.C., § [63-3029C] 63-3029B, as added by 1982, ch. 84, § 1, p. 157; am. 1986, ch. 141, § 1, p. 398; am. 1998, ch. 131, § 1, p. 485; am. 1998, ch. 133, § 1, p. 490; am. 1998, ch. 183, § 1, p. 672; am. 1999, ch. 257, § 1, p. 661; am. 2000, ch. 216, § 1, p. 604; am. 2001, ch. 157, § 1, p. 564; am. 2001, ch. 382, § 1, p. 1339; am. 2002, ch. 269, § 1, p. 799; am. 2004, ch. 80, § 1, p. 305; am. 2004, ch. 193, § 1, p. 603; am. 2006, ch. 69, § 1, p. 212; am. 2006, ch. 209, § 1, p. 638; am. 2006, ch. 307, § 1, p. 946; am. 2006, ch. 309, § 1, p. 952; am. 2006, ch. 320, § 1, p. 1018.]

STATUTORY NOTES

Amendments. — This section was amended by three 1998 acts — ch. 131, § 1, effective retroactively to January 1, 1998, ch. 133 § 1, effective July 1, 1998, and ch. 183, § 1, effective July 1, 1998, which do not conflict and have been compiled together.

The 1998 amendment, by ch. 131, § 1, in the introductory paragraph, inserted "to the children's home society of Idaho, inc.," and substituted "children's" for "childrens'."

The 1998 amendment, by ch. 133, § 1, in the introductory paragraph, inserted "to a center for independent living located within the state of Idaho," added present subsection (3) and designated the last paragraph of the section as subsection (4).

The 1998 amendment, by ch. 183, § 1, in the introductory paragraph, inserted "or its foundation" in four places.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 157, § 1, in the first undesignated paragraph, following "or its foundation," inserted "to gem youth services or its foundation."

The 2001 amendment, by ch. 382, § 1, in subsection (4), following "rehabilitation facilities" inserted "or another accreditation organization recognized by the state of Idaho."

This section was amended by two 2004 acts which appear to be compatible and have been compiled together.

The 2004 amendment, by ch. 193, § 1, effective January 1, 2004 and approved March 23, 2004, inserted "to the women's and children's alliance or its foundation," in the first paragraph.

The 2004 amendment, by ch. 80, § 1, effective July 1, 2004, inserted "to children's village, inc. or its foundation," in the first paragraph.

This section was amended by five 2006 acts

which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 69, inserted "to the learning lab, inc. or its foundation" in the introductory paragraph.

The 2006 amendment, by ch. 209, inserted "to a project safe place located within the state of Idaho" near the end of the introductory paragraph.

The 2006 amendment, by ch. 307, in the introductory paragraph, inserted "to project P.A.T.C.H., planned assistance for troubled children" near the end of the introductory paragraph.

The 2006 amendment, by ch. 309, inserted "to Idaho drug free youth, inc. or its foundation" near the middle of the introductory paragraph.

The 2006 amendment, by ch. 320, inserted "to the shepherd's home, inc. or its foundation" near the end of the introductory paragraph.

Compiler's Notes. — Two 1982 acts, chapters 48 and 84, created new sections designated as § 63-3029B. Chapter 48, § 1 is compiled as § 63-3029B and ch. 84 was temporarily compiled as § [63-3029C] 63-3029B. Section 1 of S.L. 1986, ch. 141, amended and permanently redesignated this section as § 63-3029C.

Section 1 of S.L. 1986, ch. 141, amended and redesignated this section as § 63-3029C.

Effective Dates. — Section 2 of S.L. 1986, ch. 141 read: "An emergency existing therefor, which emergency is hereby declared to exist,

this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1986." Approved April 1, 1986.

Section 2 of S.L. 1998, ch. 131, declared an emergency and provided this act shall be in full force and effect on and after March 20, 1998, and retroactively to January 1, 1998. Approved March 20, 1998.

Section 2 of S.L. 1999, ch. 257 declared an emergency retroactively to January 1, 1999 and approved March 24, 1999.

Section 2 of S.L. 2000, ch. 216 declared an emergency retroactively to January 1, 2000 and approved April 12, 2000.

Section 2 of S.L. 2001, ch. 157 declared an emergency retroactively to January 1, 2001 and approved March 23, 2001.

Section 2 of S.L. 2001, ch. 382 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 2 of S.L. 2004, ch. 193 declared an emergency retroactively to January 1, 2004. Approved March 23, 2004.

Section 2 of S.L. 2006, ch. 69 declared an emergency retroactively to January 1, 2006 and approved March 15, 2006.

Section 2 of S.L. 2006, ch. 209 declared an emergency retroactively to January 1, 2006 and approved on March 24, 2006.

Section 2 of S.L. 2006, ch. 307 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

Section 2 of S.L. 2006, ch. 320 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-3029D. Tax credit for qualified equipment utilizing postconsumer waste or postindustrial waste. — (1) For income tax years commencing on and after January 1, 1994, there shall be allowed a credit against the tax imposed pursuant to this chapter for each taxpayer who purchases qualified equipment on and after January 1, 1994.

(2) The credit provided pursuant to the provisions of subsection (1) of this section shall be an amount equal to twenty percent (20%) of the costs incurred by the taxpayer for purchases of qualified equipment and shall be claimed in the income tax year in which at least ninety percent (90%) of the total production of such qualified equipment is used by the taxpayer to manufacture products utilizing postconsumer waste or postindustrial waste. In no event shall the tax credit be more than thirty thousand dollars (\$30,000) per tax year.

(3) If the amount of the credit provided pursuant to the provisions of subsection (2) of this section exceeds the amount of income taxes otherwise due on the income of the taxpayer in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in such income tax year may be carried forward as a credit against subsequent years' income tax liability for a period not exceeding seven (7) years and shall be applied first to the earliest income tax years

possible. Any amount of the credit which is not used after such period shall not be refundable to the taxpayer.

(4) As used in this section:

(a) "Collection" means:

(i) The acquisition of materials from businesses or the general public through purchase or donation, including the organization of systems for such acquisitions;

(ii) The preparation of materials for over-the-road transportation through cleaning, densification by shredding, baling, or any other method, or coalescence, including the organization of systems for such preparation; or

(iii) The transportation of postconsumer waste or postindustrial waste between separate geographical locations.

(b) "Costs" means the amount of the purchase price or the amount of the annual lease payment.

(c) "Postconsumer waste" or "postindustrial waste" means only those products and materials consisting of paper, glass or plastic generated by businesses or consumers which have served their intended end use or usefulness and either have been or would normally be disposed of as solid waste except for the fact that they are separated from solid waste for purposes of collection, recycling or reuse. "Postconsumer waste" or "postindustrial waste" shall not include radioactive waste, as defined in this section, or hazardous waste, as defined in chapter 44, title 39, Idaho Code.

(d) "Product" means any material resulting from a manufacturing process and offered for sale to the private or public sector which is composed of at least fifty percent (50%) postconsumer waste or postindustrial waste. "Product" does not include any shredded material unless such shredded material is incorporated directly into the manufacturing process.

(e) "Purchase" means:

(i) Any transaction under which title to qualified equipment is transferred for consideration; or

(ii) Any lease contract for qualified equipment for a period of at least three (3) years regardless of whether title to qualified equipment is transferred at the end of such period.

(f) "Qualified equipment" means machinery or equipment located within Idaho which has at least an estimated three (3) years' useful life and of which at least ninety percent (90%) of the total production thereof is used by the taxpayer to manufacture products utilizing postconsumer waste or postindustrial waste. "Qualified equipment" shall not include any machinery or equipment which is used for the collection of postconsumer waste or postindustrial waste.

(g) "Radioactive waste" or "nuclear waste" means a waste or combination of wastes of a solid, liquid, semisolid or contained gaseous form which contains radiation.

(5) Any recomputation of the credit allowed in subsection (2) of this section on property disposed of or ceasing to qualify, prior to the close of its useful life, shall be determined according to section 47 of the Internal

Revenue Code, as such existed on November 5, 1990. [I.C., § 63-3029D, as added by 1994, ch. 342, § 1, p. 1077; am. 2007, ch. 83, § 10, p. 221.]

STATUTORY NOTES

Prior Laws. — Former § 63-3029D, which comprised (I.C., § 63-3029D, as added by 1982, ch. 188, § 1, p. 506), was repealed by S.L. 1983, ch. 230, § 1.

Amendments. — The 2007 amendment, by ch. 83, deleted “as that term is defined in section 39-3003, Idaho Code” from the end of subsection (4)(g).

Effective Dates. — Section 2 of S.L. 1994, ch. 342, declared an emergency and provided this act shall be in full force and effect on and after April 6, 1994, and retroactively to January 1, 1994. Approved April 6, 1994.

63-3029E. Definitions — Construction of terms. — As used in this section and in section 63-3029F, Idaho Code:

(1)(a) “New employee” means a person subject to Idaho income tax withholding whether or not any amounts are required to be withheld, employed by the taxpayer in a trade or business, and covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, during the taxable year for which the credit allowed by section 63-3029F, Idaho Code, is claimed. A person shall be deemed to be so engaged if such person performs duties on:

(i) A regular full-time basis; or

(ii) A part-time basis if such person is customarily performing such duties at least twenty (20) hours per week.

No credit shall be earned unless the new employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(b) The provisions of paragraph (a) of this subsection notwithstanding, no credit shall be allowed for employment of persons by a taxpayer who acquires a trade or business from another taxpayer or who operates in a place of business the same or a substantially identical trade or business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer would have qualified under the provisions of paragraph (c) of this subsection. Employees transferred from a related taxpayer shall not be included in the computation of the credit.

(c) The number of employees during any taxable year for any taxpayer shall be the mathematical average of the number of employees reported to the Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (a) of this subsection. In the event the business is in operation for less than the entire taxable year, the number of employees of the business for the year shall be the average number actually employed during the months of operation, providing that the qualifications of paragraph (a) of this subsection are met.

(2) “Revenue-producing enterprise” means the production, assembly, fabrication, manufacture or processing of any natural resource product.

(3) “Same or a substantially identical trade or business” means a trade or business in which the products produced or sold, or the activities conducted

are the same in character and use and are produced, sold or conducted in the same manner as, or for the same types of customers as, the products or activities produced, sold or conducted in another trade or business. [I.C., § 63-3029E, as added by 2001, ch. 386, § 14, p. 1348; am. 2002, ch. 35, § 8, p. 66; am. 2003, ch. 10, § 4, p. 22; am. 2004, ch. 318, § 12, p. 892; am. 2005, ch. 23, § 2, p. 61.]

STATUTORY NOTES

Prior Laws. — Former § 63-3029E, which comprised I.C., § 63-3029E, as added by 2000, ch. 427, § 1, p. 1380, was repealed by S.L. 2001, ch. 386, § 13, effective January 1, 2002.

Another former § 63-3029E, which comprised I.C., § 63-3029E, as added by 1983, ch. 230, § 2, p. 631 was repealed by S.L. 1996, ch. 41, § 1, p. 111 effective January 1, 1996.

A former § 63-3029E which comprised I.C., § 63-3029E, as added by 1982, ch. 188, § 2, p. 506, was repealed by S.L. 1983, ch. 230, § 1.

Compiler's Notes. — Section 16 of S.L. 2001, ch. 386 provided: "The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render the entire

section invalid but not other sections of this act."

Effective Dates. — Section 3 of S.L. 2000, ch. 427, declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 17 of S.L. 2001, ch. 386 declared an emergency and made §§ 5, 6, 8, 10, 11, and 12 of the act effective retroactively to January 1, 2001. Sections 13, 14, and 15 were made effective on or after January 1, 2002.

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

Section 14 of S.L. 2004, ch. 318 declared an emergency retroactively to January 1, 2004. Approved March 24, 2004.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

63-3029F. Special credit available — New employees. — (1) Any taxpayer shall be allowed a credit, in an amount determined under subsection (2) of this section, against the tax imposed by this chapter, other than the tax imposed by section 63-3082, Idaho Code, for any taxable year during which the taxpayer's employment of new employees, as defined under section 63-3029E(1), Idaho Code, increases above the taxpayer's average employment for either: (a) the prior taxable year, or (b) the average of three (3) prior taxable years, whichever is higher. No credit shall be allowed under this section unless the number of new employees equals or exceeds one (1) person.

(2)(a) The credit authorized in subsection (1) of this section shall be:

(i) Five hundred dollars (\$500) per new employee described in subsection (2)(d) of this section; or

(ii) One thousand dollars (\$1,000) per new employee described in subsection (2)(c) of this section, but not both.

(b) The total credit allowed by this section shall not exceed three and one-quarter percent (3.25%) of net income from the taxpayer's corporate, proprietorship, partnership, small business corporation or limited liability company trade or business in which the employment occurred. Additionally, the total amount of this and all other credits allowed under this chapter except for the credits allowed under section 63-3029, Idaho Code, shall not exceed fifty percent (50%) of the tax liability of the

taxpayer. The tax liability of the taxpayer shall be the tax after deducting the credit allowed by section 63-3029, Idaho Code.

(c) The one thousand dollar (\$1,000) credit shall apply to an employee who, in the calendar year ending during the taxable year for which the credit is claimed, received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked and who, during such calendar year, was eligible to receive employer provided coverage under an accident or health plan described in section 105 of the Internal Revenue Code.

(d) The five hundred dollar (\$500) credit shall apply to an employee not described in subsection (2)(c) of this section and who is employed in a revenue-producing enterprise as defined in section 63-3029E, Idaho Code.

(3) If the sum of the credit carryovers from the credit allowed by subsection (2) of this section and the amount of credit for the taxable year from the credit allowed by subsection (2) of this section exceed the limitation imposed by subsection (2) of this section for the current taxable year, the excess attributable to the current taxable year's credit shall be a credit carryover to the three (3) succeeding taxable years. The entire amount of unused credit shall be carried forward to the earliest of the succeeding years, wherein the oldest available unused credit shall be used first, so long as the employment level for which the credit was granted is still maintained. [I.C., § 63-3029F, as added by 2001, ch. 386, § 15, p. 1348; am. 2003, ch. 10, § 5, p. 22; am. 2004, ch. 347, § 1, p. 1038; am. 2005, ch. 23, § 3, p. 61.]

STATUTORY NOTES

Prior Laws. — Former § 63-3029F, which comprised I.C., § 63-3029F, as added by 2000, ch. 427, § 2, p. 1380, was repealed by S.L. 2001, ch. 386, § 13, effective January 1, 2002.

A former § 63-3029F, which comprised I.C., § 63-3029F, as added by 1983, ch. 230, § 3, p. 631, was repealed by S.L. 1996, ch. 41, § 1, p. 111 effective January 1, 1996.

Another former § 63-3029F which comprised I.C., § 63-3029F, as added by 1982, ch. 188, § 3, p. 506, was repealed by S.L. 1983, ch. 230, § 1, effective January 1, 1983.

Amendments. — This section was amended by two 2001 acts — ch. 270, § 7 and ch. 386, § 12, both effective January 1, 2001, which do not conflict and have been compiled together.

The 2001 amendment, by ch. 270, § 7, in the second sentence of subsection (2), inserted "amount" following "Additionally, the total", deleted "63-3024A, 63-3025D and" preceding "63-3029, Idaho Code", deleted "taken during any taxable year" preceding "shall not exceed", substituted "fifty percent (50%) of the tax liability of the taxpayer" for "shall not exceed forty-five percent (45%) of the tax otherwise imposed on the taxpayer for the taxable year for which such credit is allowed", and added the third sentence.

The 2001 amendment, by ch. 386, § 12, in

the first sentence of subsection (2) substituted "or limited liability company business in which" for "or limited liability company revenue-producing enterprise in which."

Federal References. — Section 105 of the internal revenue code, referred to in subsection (2)(c), is codified as 26 U.S.C.S. § 105.

Compiler's Notes. — Section 16 of S.L. 2001, ch. 386 provided: "The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render the entire section invalid but not other sections of this act."

Effective Dates. — Section 3 of S.L. 2000, ch. 427 declared an emergency retroactively to January 1, 2000 and approved April 17, 2000.

Section 17 of S.L. 2001, ch. 386 declared an emergency and made §§ 5, 6, 8, 10, 11, and 12 of the act effective retroactively to January 1, 2001. Sections 13, 14, and 15 were made effective on or after January 1, 2002.

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

Section 2 of S.L. 2004, ch. 347 declared an emergency retroactively to January 1, 2004. Approved March 26, 2004.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

63-3029G. Credits for research activities conducted in this state — Carry forward.

— (1)(a) Subject to the limitations of this section, for taxable years after January 1, 2001, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for increasing research activities in Idaho beginning, at the election of the taxpayer, either:

(i) January 1, 2001, or

(ii) The first day of the taxpayer's taxable year beginning in 2001.

(b) The credit allowed by subsection (1)(a) of this section shall be the sum of:

(i) Five percent (5%) of the excess of qualified research expenses for research conducted in Idaho over the base amount; and

(ii) Five percent (5%) basic research payments allowable under subsection (e) of section 41 of the Internal Revenue Code for basic research conducted in Idaho.

(c) Subject to the limitation in subsection (3) of this section, a taxpayer making the election permitted by subsection (1)(a)(i) of this section, credit for research activities occurring prior to the beginning of the taxpayer's taxable year beginning in 2001 shall be claimed on the taxpayer's return for its taxable year 2001 in addition to credit relating to activity in that year.

(2) As used in this section:

(a) The terms "qualified research expenses," "qualified research," "basic research payments" and "basic research" shall be as defined in section 41 of the Internal Revenue Code except that the research must be conducted in Idaho.

(b) The term "base amount" shall mean an amount calculated as provided in sections 41(c) and 41(h) of the Internal Revenue Code, except that:

(i) The base amount does not include the calculation of the alternative incremental credit provided for in section 41(c)(4) of the Internal Revenue Code;

(ii) A taxpayer's gross receipts include only those gross receipts attributable to sources within this state as provided in subsections (q) and (r) of section 63-3027, Idaho Code; and

(iii) Notwithstanding section 41(c) of the Internal Revenue Code, for purposes of calculating the base amount, a taxpayer:

(A) May elect to be treated as a start-up company as provided in section 41(c)(3)(B) of the Internal Revenue Code, regardless of whether the taxpayer meets the requirements of section 41(c)(3)(B)(i)(I) or (II) of the Internal Revenue Code; and

(B) May not revoke an election to be treated as a start-up company.

(3) The credit allowed by subsection (1)(a) of this section together with any credits carried forward under subsection (5) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this

chapter. When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(4) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group. For a combined group of corporations, any member of the group may claim credit carried forward unless the member who earned the credit is no longer included in the combined group.

(5) The credit allowed by subsection (1)(a) of this section shall be claimed for the taxable year during which the taxpayer qualifies for the credit. If the credit exceeds the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(6) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate. [I.C., § 63-3029G, as added by 2001, ch. 386, § 6, p. 1348; am. 2002, ch. 35, § 1, p. 66; am. 2004, ch. 345, § 1, p. 1025.]

STATUTORY NOTES

Prior Laws. — Former § 63-3029G, which comprised I.C., § 63-3022G, as added by S.L. 1989, ch. 246, § 1, p. 595; am. 1995, ch. 111, § 14, p. 347, was repealed by S.L. 1997, ch. 57 § 8, effective January 1, 1997.

A former § 63-3029G, which comprised (I.C., § 63-3029G, as added by 1982, ch. 188, § 4, p. 506), was repealed by S.L. 1983, ch. 230, § 1.

Federal References. — Section 41 of the internal revenue code, referred to throughout this section, is codified as 26 U.S.C.S. § 41.

Compiler's Notes. — Section 16 of S.L. 2001, ch. 386 provided "The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are

hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render the entire section invalid but not other sections of this act."

Effective Dates. — Section 17 of S.L. 2001, ch. 386 declared an emergency and made §§ 5, 6, 8, 10, 11, and 12 of the act effective retroactively to January 1, 2001. Sections 13, 14, and 15 were made effective on or after January 1, 2002.

RESEARCH REFERENCES

A.L.R. — State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

63-3029H. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 63-3029P, pursuant to S.L. 2001, ch. 386, § 7.

63-3029I. Income tax credit for investment in broadband equipment. — (1) Subject to the limitations of this section, for taxable years beginning after January 1, 2001, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, for qualified expenditures in qualified broadband equipment in Idaho.

(2) The credit permitted in subsection (1) of this section shall be three percent (3%) of the qualified investment in qualified broadband equipment in Idaho and shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(3) As used in this section the term:

(a) “Qualified investment” shall be as defined in section 63-3029B, Idaho Code.

(b) “Qualified broadband equipment” means equipment that qualifies for the credit for capital investment permitted by section 63-3029B, Idaho Code, and is capable of transmitting signals at a rate of at least two hundred thousand (200,000) bits per second to a subscriber and at least one hundred twenty-five thousand (125,000) bits per second from a subscriber, and

(i) In the case of a telecommunications carrier, such qualifying equipment shall be necessary to the provision of broadband service and an integral part of a broadband network. “Telecommunications carrier” has the meaning given such term by section 3(44) of the communications act of 1934, as amended, but does not include a commercial mobile service provider.

(ii) In the case of a commercial mobile service carrier, such qualifying equipment shall extend from the subscriber side of the mobile telecommunications switching office to a transmitting/receiving antenna, including such antenna, on the outside of the structure in which the subscriber is located. “Commercial mobile service carrier” means any person authorized to provide commercial mobile radio service to subscribers as defined in section 20.3 of title 47, Code of Federal Regulations (10-1-99 ed.), as amended.

(iii) In the case of a cable or open video system operator, such qualifying equipment shall extend from the subscriber’s side of the headend to the outside of the structure in which the subscriber is located. The terms “cable operator” and “open video system operator” have the meanings given such terms by sections 602(5) and 653, respectively, of the communications act of 1934, as amended.

(iv) In the case of a satellite carrier or a wireless carrier other than listed above, such qualifying equipment is only that equipment that extends from a transmitting/receiving antenna, including such antenna, which transmits and receives signals to or from multiple subscribers to a transmitting/receiving antenna on the outside of the structure in which the subscriber is located. “Satellite carrier” means any person using the facilities of a satellite or satellite services licensed by the federal communications commission and operating a fixed-satellite service or direct broadcast satellite services to provide point-

to-multipoint distribution of signals. "Other wireless carrier" means any person, other than a telecommunications carrier, commercial mobile service carrier, cable operator, open video operator, or satellite carrier, providing broadband services to subscribers through the radio transmission of energy.

(v) In the case of packet switching equipment, such packet equipment installed in connection with other qualifying equipment listed in subsections (3)(b)(i) through (3)(b)(iv) of this section, provided it is the last in a series of equipment that transmits signals to a subscriber or the first in a series of equipment that transmits signals from a subscriber. "Packet switching" means controlling or routing the path of a digital transmission signal which is assembled into packets or cells.

(vi) In the case of multiplexing and demultiplexing equipment, such equipment only to the extent that it is deployed in connection with providing broadband services in locations between packet switching equipment and the structure in which the subscriber is located. "Multiplexing" means the transmission of two (2) or more signals over a communications circuit without regard to the communications technology.

(vii) Any property not primarily used to provide services in Idaho to public subscribers is not qualified broadband equipment.

(4) No equipment described in subsections (3)(b)(i) through (3)(b)(vi) of this section shall qualify for the credit provided in subsection (1) of this section until the taxpayer applies to and obtains from the Idaho public utilities commission an order confirming that the installed equipment is qualified broadband equipment. Applications submitted to the commission shall be governed by the commission's rules of procedure. The commission may issue procedural orders necessary to implement this section.

(5) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (7) of this section shall not, in any one (1) taxable year, exceed the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Seven hundred fifty thousand dollars (\$750,000).

When credits earned in more than one (1) taxable year are available, the oldest credits shall be applied first.

(6) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (7) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(7) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (5) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(8) In the event that qualified broadband equipment upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, or is subject to recapture of that credit, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(9)(a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer all or a portion of the unused credit to:

- (i) Another taxpayer required to file a return under this chapter; or
- (ii) To an intermediary for its use or for resale to a taxpayer required to file a return under this chapter.

In the event of either such a transfer, the transferee may claim the credit on the transferee's income tax return originally filed during the calendar year in which the transfer takes place and, in the case of carryover of the credit, on the transferee's returns for the number of years of carryover available to the transferor at the time of the transfer unless earlier exhausted.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission's records and the number of years the credit may be carried over. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit or that the credit is subject to recapture, the commission shall assess the amount of overstated or recaptured credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(10) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate. [I.C., § 63-3029I, as added by 2001, ch. 386, § 8, p. 1348; am. 2002, ch. 35, § 9, p. 66; am. 2003, ch. 89, § 1, p. 270; am. 2004, ch. 345, § 2, p. 1025; am. 2005, ch. 23, § 4, p. 61.]

STATUTORY NOTES

Federal References. — Section 3(44) of the communication act of 1934, referred to in paragraph (3)(b)(i), is codified as 47 U.S.C.S. § 153(44).

Sections 602(5) and 653 of the communication act of 1934, referred to in paragraph (3)(b)(iii), is codified as 47 U.S.C.S. §§ 522(5) and 572.

Compiler's Notes. — Section 16 of S.L. 2001, ch. 386 provided: "The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall render the entire section invalid but not other sections of this act."

Effective Dates. — Section 17 of S.L.

2001, ch. 386 declared an emergency and made §§ 5, 6, 8, 10, 11, and 12 of the act effective retroactively to January 1, 2001. Sections 13, 14, and 15 were made effective on or after January 1, 2002.

Section 3 of S.L. 2003, ch. 89 declared an emergency retroactively to January 1, 2003 and approved March 17, 2003.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

RESEARCH REFERENCES

A.L.R. — State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

63-3029J. Incentive income tax investment credit. — (1) Subject to the limitations of this section, for taxable year 2001 only, there shall be allowed to a taxpayer a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount allowed by subsection (2) of this section for qualified investments in Idaho. The credit shall be in addition to the credit for capital investment permitted by section 63-3029B, Idaho Code.

(2) The credit permitted in subsection (1) of this section shall be at the percentage rate determined under either subsection (2)(a) or (2)(b) of this section at the election of the taxpayer.

(a)(i) One-half (1/2) of the amount by which the average three-year unemployment rate in the county in which the property is located exceeds six percent (6%). In the case of mobile property, the property shall be located in the county in which it is primarily based.

(ii) For purposes of this section the director of the department of labor shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the average three-year unemployment rate in each county in Idaho for the immediately preceding three (3) calendar years. The rates thus certified shall apply to the calculation of the credit under subsection (2)(a)(i) of this section for property qualifying in the taxable year beginning during the next calendar year.

(b)(i) One-tenth of one percent (.1%) for each full percent that the three-year average per capita personal income level in the county in which the property is located is below ninety percent (90%) of the average statewide per capita personal income level.

(ii) For purposes of this section the director of the department of labor shall, on or before the first day of September of each calendar year, establish and certify to the state tax commission the most current three-year average per capita personal income level in each county in Idaho and the statewide per capita personal income level for the most current preceding three (3) calendar years. The levels thus certified shall apply to the calculation of the credit under subsection (2)(b)(i) of

this section for property qualifying in the taxable year beginning during the next calendar year.

(3) As used in this section the term “qualified investment” shall be defined as in section 63-3029B, Idaho Code.

(4) The credit allowed by subsection (1) of this section together with any credits carried forward under subsection (6) of this section shall not exceed in any one (1) taxable year the lesser of:

(a) The amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter; or

(b) Five hundred thousand dollars (\$500,000).

(5) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (6) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(6) If the credit allowed by subsection (1) of this section exceeds the limitation under subsection (4) of this section, the excess amount may be carried forward for a period that does not exceed the next fourteen (14) taxable years.

(7) In the event that property upon which the credit allowed by this section has been used ceases to qualify for the credit allowed by section 63-3029B, Idaho Code, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(8)(a) Subject to the requirements of this subsection, a taxpayer who earns and is entitled to the credit or to an unused portion of the credit allowed by this section may transfer the unused credit to another taxpayer required to file a return under this chapter.

(b) Before completing a transfer under this subsection, the transferor shall notify the state tax commission of its intention to transfer the credit and the identity of the transferee. The state tax commission shall provide the transferor with a written statement of the amount of credit available under this section as then appearing in the commission’s records and the number of years the credit may be carried over. The transferor shall provide the transferee with the original statement. The transferee shall attach a copy of the statement to any return in regard to which the transferred credit is claimed.

(c) In the event that after the transfer the state tax commission determines that the amount of credit properly available under this section is less than the amount claimed by the transferor of the credit and shown in the statement described in subsection (8)(b) of this section or that the credit is subject to recapture, the commission shall assess the amount of overstated credit as taxes due from the transferor and not the transferee. The assessment shall be made in the manner provided for a deficiency in taxes under this chapter.

(9) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate.

(b) A requirement that a transferor under subsection (8) of this section, prior to obtaining the written statement provided in subsection (8)(b) of this section, post such bond or security as the state tax commission may require to secure any liability referred to in subsection (8)(c) of this section. Such rules shall provide an opportunity for a taxpayer, upon a showing of financial responsibility, to have the bond waiver, for notice of denial of waiver in accordance with section 63-3045, Idaho Code, and for review in accordance with section 63-3045B, Idaho Code. [I.C., § 63-3029J, as added by 2001, ch. 386, § 10, p. 1348; am. 2003, ch. 89, § 2, p. 270; am. 2007, ch. 360, § 22, p. 1061.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 360, substituted “department of labor” for “department of commerce” in subsection (2)(b)(ii).

Compiler’s Notes. — Section 16 of S.L. 2001, ch. 386 provided: “The provisions of Sections 5, 6, 8, 10, 11 and 12 of this act are hereby declared to be nonseverable from other provisions within each section and if any provision of any of those sections or the application of such provision to any person or

circumstance is declared invalid for any reason, such declaration shall render the entire section invalid but not other sections of this act.”

Effective Dates. — Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

Section 3 of S.L. 2003, ch. 89 declared an emergency retroactively to January 1, 2003 and approved March 17, 2003.

RESEARCH REFERENCES

A.L.R. — State income tax treatment of S corporations and their shareholders. 118 A.L.R.5th 597.

63-3029K. Tax credit for live organ donation expenses. — (1) As used in this section:

(a) “Human organ” means human bone marrow or any part of a human including the intestine, kidney, liver, lung or pancreas.

(b) “Live organ donation” means that an individual who is living donates one (1) or more of that individual’s human organs to another human to be transplanted using a medical procedure to the body of the other human.

(c) “Live organ donation expenses” means the total amount of expenses incurred by a taxpayer that are not reimbursed to that taxpayer by any person, are directly related to a live organ donation by the taxpayer or another individual that the taxpayer is allowed to claim as a dependent in accordance with section 151 of the Internal Revenue Code and include travel, lodging or lost wages as defined by rule by the state tax commission.

(2) For taxable years beginning on or after January 1, 2007, a taxpayer may claim a nonrefundable credit against taxes imposed by this chapter for live organ donation expenses incurred during the taxable year for which the live organ donation occurs in an amount equal to the lesser of the actual amount of the live organ donation expenses or five thousand dollars (\$5,000).

(3) If the amount of a tax credit under this section exceeds a taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit that exceeds the taxpayer's income tax liability may be carried forward for a period that does not exceed the next five (5) taxable years. [I.C., § 63-3029K, as added by 2006, ch. 312, § 1, p. 968.]

STATUTORY NOTES

Federal References. — Section 157 of the internal revenue code, referred to in paragraph (1)(c), is codified as 26 U.S.C.S. § 151.

63-3029L. [Reserved.]

63-3029M. Income tax credit for capital investment in biofuel infrastructure. [Effective until January 1, 2012.] — (1) The definitions contained in the Idaho income tax act shall apply to this section unless the context clearly requires another definition.

(2) As used in this section:

(a) "Biofuel" means any fuel offered for sale as a transportation fuel that is agriculturally derived and meets applicable ASTM standards as required in section 37-2506, Idaho Code, including, but not limited to, ethanol, ethanol-blended fuel, biodiesel and biodiesel blends.

(b) "Fuel distributor" or "distributor" means any business with a situs in Idaho that distributes motor vehicle fuel including, but not limited to, wholesalers, jobbers, distributors or terminal operators.

(c) "Fueling infrastructure" means necessary tanks, piping, pumps, pump stands, hoses, monitors, blending equipment, meters, rack injection systems or any other equipment including installation of equipment necessary for a fuel distributor to offer biofuel to its customers, or for a retail fuel outlet to offer biofuel for sale.

(d) "Placed into service" means that biofuel is offered for sale and continues to be offered for sale through the fueling infrastructure made available by the qualified investment.

(e) "Qualified investment" means installation of new fueling infrastructure dedicated to the purpose of selling or offering for sale biofuel; or upgrading existing fueling infrastructure demonstrated to be incompatible with the biofuel to be offered, including cleaning of existing fuel storage tanks, trucks or other equipment for the purpose of providing biofuels.

(f) "Recapture period" means a period of five (5) years from the date the qualified investment was placed into service. During this period, biofuel must be offered for sale on a continuous basis.

(g) "Retail fuel dealer" or "dealer" means any business with a situs in Idaho that sells or offers for sale at the retail level motor vehicle fuel.

(3) For taxable years beginning on or after January 1, 2007, and before December 31, 2011, and subject to the limitations of this section, a taxpayer who has placed into service a qualified investment after July 1, 2007, shall, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of six percent (6%) of the amount of qualified investment as defined in subsection (2) of this section, and made during a taxable year, wherever located within this state.

(4) The credit allowed by this section shall not exceed fifty percent (50%) of the income tax liability of the taxpayer.

(5) In the case of a group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credit earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the provisions of subsection (6) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member who earned the credit is no longer included in the combined group.

(6) If the credit allowed by subsection (3) of this section exceeds the limitation under subsection (4) of this section, the excess amount may be carried forward for a period that does not exceed the next five (5) taxable years.

(7) In the event that the qualified investment upon which the credit allowed by this section has been used ceases to qualify for the credit during the recapture period, the recapture of credit under this section shall be in the same proportion and subject to the same provisions as the amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(8) In addition to other needed rules, the state tax commission may promulgate rules prescribing, in the case of S corporations, partnerships, limited liability companies, trusts or estates, a method of attributing the credit under this section to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate. [I.C., § 63-3029M, as added by 2007, ch. 165, § 1, p. 492.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2007, ch. 165 provided "This act shall be in full force and effect on and after July 1, 2007, and shall

be null, void and of no force and effect on and after January 1, 2012."

63-3029N, 63-3039O. [Reserved.]

63-3029P. Priority of credits. — When a taxpayer subject to any taxes imposed under this chapter is entitled to two (2) or more credits against such taxes, the priority of credits shall be determined in the following order:

(a) Nonrefundable credits. Nonrefundable credits shall be applied to the tax liability before application of refundable credits. If a taxpayer is entitled

to more than one (1) nonrefundable credit, the credits shall be applied in the order in which the statutes authorizing the credits were enacted by the legislature.

(b) Refundable credits. Refundable credits shall be applied to the tax liability after application of any nonrefundable credits. [I.C., § 63-3029H, as added by 1983, ch. 21, § 2, p. 60; am. and redesisg. 2001, ch. 386, § 7, p. 1348.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 63-3029H.

Effective Dates. — Section 3 of S.L. 1983, ch. 21 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, and

retroactively to January 1, 1983. Approved March 7, 1983.

Section 17 of S.L. 2001, ch. 386 declared an emergency retroactively to January 1, 2001 and approved April 11, 2001.

63-3030. Persons required to make returns of income. —

(a) Returns with respect to taxes measured by income in this chapter shall be made by the following:

(1) Every resident individual required to file a federal return under section 6012(a)(1) of the Internal Revenue Code.

(2) Any nonresident individual having for the current taxable year a gross income from Idaho sources in excess of two thousand five hundred dollars (\$2,500), or any part-year resident individual having for the current taxable year a gross income from all sources while domiciled in or residing in Idaho, and from Idaho sources while not domiciled in and not residing in Idaho, which in total are in excess of two thousand five hundred dollars (\$2,500);

(3) Every corporation which is transacting business in this state, authorized to transact business in this state or having income attributable to this state, unless exempt from the tax imposed in this chapter;

(4) Every corporation reporting as an S corporation pursuant to Internal Revenue Code sections 1361 through 1379 to the federal government, which is transacting business in this state, or is authorized to transact business in this state. A corporation which is reporting as an S corporation to the federal government must report to the state of Idaho as an S corporation for and during the same period or periods in which its election to report as such a corporation is effective for federal tax purposes and must identify itself as an S corporation on its income tax return filed with this state;

(5) Every estate, the residence of which estate is in Idaho, having a gross income of six hundred dollars (\$600) or more for the current taxable year;

(6) Every estate, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of six hundred dollars (\$600);

(7) Every trust required to file a federal return under the Internal Revenue Code, the residence of which trust is in Idaho, having gross income of one hundred dollars (\$100) or more for the current taxable year;

(8) Every trust required to file a federal return under the Internal Revenue Code, the residence of which is in a state other than Idaho, having a gross income from Idaho sources in excess of one hundred dollars (\$100);

(9) Every partnership which transacts business in this state. Such return shall be a supplemental information return and shall include the names and addresses of the persons who would be entitled to share in the net income of the partnership if distributed and the amount of the distributive share of each person. Such return shall be signed by one (1) of the partners.

(b) Returns of fiduciaries and receivers:

(1) Fiduciaries and receivers shall file returns with the state tax commission in accordance with the provisions of section 6012(b) of the Internal Revenue Code. [1959, ch. 299, § 30, p. 613; am. 1961, ch. 328, § 13, p. 622; am. 1967, ch. 294, § 5, p. 828; am. 1970, ch. 222, § 7, p. 621; am. 1971, ch. 302, § 3, p. 1242; am. 1973, ch. 100, § 1, p. 168; am. 1977, ch. 85, § 1, p. 174; am. 1981, ch. 291, § 1, p. 610; am. 1987, ch. 93, § 6, p. 176; am. 1987, ch. 315, § 1, p. 658; am. 1989, ch. 181, § 4, p. 449; am. 1993, ch. 3, § 3, p. 5; am. 1994, ch. 39, § 3, p. 57; am. 1995, ch. 111, § 31, p. 347; am. 1996, ch. 37, § 1, p. 99; am. 1998, ch. 51, § 1, p. 201; am. 2000, ch. 26, § 5, p. 45.]

STATUTORY NOTES

Federal References. — The sections of the Internal Revenue Code referred to in this section are compiled in 26 U.S.C., under the corresponding section numbers.

Compiler's Notes. — As enacted by S.L. 1959, ch. 299, § 30, subsection (b) of this section, contains a paragraph (1), but no paragraph (2).

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961. The 1967 amendment became effective January 1, 1967.

Section 7 of S.L. 1987, ch. 93 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987; provided, however, that the amendments made to the Internal Revenue Code by the Tax Reform Act of 1986 shall be in full force and effect in this state on and after the dates provided in that act."

Section 2 of S.L. 1973, ch. 100 declared an emergency and provided that the act should take effect retroactive to January 1, 1973. Approved March 9, 1973.

Section 2 of S.L. 1977, ch. 85 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1977. Approved March 17, 1977.

Section 2 of Acts 1981, ch. 291 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1981. Approved April 7, 1981.

Section 2 of S.L. 1987, ch. 315 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1987. Approved April 4, 1987.

Section 5 of S.L. 1989, ch. 181 declared an emergency and provided that the act should take effect retroactive to January 1, 1989. Approved March 29, 1989.

Section 6 of S.L. 1994, ch. 39, declared an emergency and provided that this act shall be in full force and effect on and after February 25, 1994, and retroactively to January 1, 1994. Approved February 25, 1994.

Section 2 of S.L. 1996, ch. 37 declared an emergency and provided that the act would be in full force and effect after passage and approval retroactive to January 1, 1996. Approved February 19, 1996.

Section 6 of S.L. 1998, ch. 51, declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

JUDICIAL DECISIONS

Disclosure of Information.

The statutory directives that individuals must file income tax returns encompasses a requirement of disclosure of all information necessary for computation of the individual's tax liability as that liability is defined by statutory provisions and commission rules; therefore regardless of whether Tax Form 40 should have been promulgated as an agency rule under the Administrative Procedure Act, defendant was obligated to file income tax returns that divulged the financial information necessary for calculation of his income tax, and writ of mandate compelling defen-

dant to comply was proper. *Idaho State Tax Comm'n v. Beacom*, 131 Idaho 569, 961 P.2d 660 (Ct. App. 1998).

Cited in: *Bills v. State*, Dep't of Revenue & Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986); *State v. Gilbert*, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987); *State v. Gibson*, 114 Idaho 771, 760 P.2d 1187 (Ct. App. 1988); *Blangers v. State*, Dep't of Revenue & Taxation, 114 Idaho 944, 763 P.2d 1052 (1988), cert. denied, 489 U.S. 1090, 109 S. Ct. 1557, 103 L. Ed. 2d 859 (1989).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 589-595.

63-3030A. Mandate to compel return. — (a) If a taxpayer fails to file a return within sixty (60) days of the time prescribed by this chapter, a district judge of the county within which the taxpayer resides or has its principal place of business or of Ada county in the case of a nonresident taxpayer or one having its principal place of business outside the state, upon petition of the state tax commission, shall issue a writ of mandate requiring the person to file a return. The petition shall be returnable not later than twenty-eight (28) days after the filing of the petition. The petition shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the case, consistent with the rights of the parties. The judgment shall include costs in favor of the prevailing party. Proceedings upon such suits shall be in accordance with chapter 3, title 7, Idaho Code.

(b) Nothing in this section shall limit the remedies otherwise available to the state tax commission under this chapter or any other laws of this state. [I.C., § 63-3030A, as added by 1982, ch. 279, § 1, p. 710; am. 1993, ch. 3, § 4, p. 5.]

JUDICIAL DECISIONS

ANALYSIS

- Construction.
- Content of return.
- Discovery device.
- Evidence.
- Evidence supporting imprisonment.
- Filing of improper return.
- Grounds for refusal.
- Retroactive application.
- Self-incrimination.

Construction.

The legislature in providing for the use of a writ of mandate to compel the filing of tax

returns under this section obviously intended the statute to be read in pari materia to the general writ of mandate statute § 7-301 et

seq. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

The legislature did not intend the requirement of the general writ of mandate statute that there be no "plain, speedy and adequate remedy in the ordinary course of law" to apply to the use of the writ under this section to compel the filing of tax returns. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

A writ of mandate is the proper remedy in a case where a person required to make an income tax return has not filed such a return. *Idaho State Tax Comm'n v. Payton*, 107 Idaho 258, 688 P.2d 1163 (1984); *Idaho State Tax Comm'n v. Peterson*, 107 Idaho 260, 688 P.2d 1165 (1984).

Content of Return.

The writ of mandate proceedings is not an appropriate proceeding in which to seek to control the contents of the return which is filed but if the court is to control the content of the return through the mandamus procedure, then before it can properly impose the extreme sanction of imprisonment for failing to obey the writ, the court issuing the writ must make specific findings as to the minimum figures which will be required to meet the demands of the writ and the writ itself should direct that at least those minimum figures be entered in certain spaces; in short, if the court issuing the writ is not going to allow the respondent to determine what figures should be entered in the spaces on the tax return, then the court should mandate the minimum figures which it will accept as constituting compliance with the writ. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

The statutory directives that individuals must file income tax returns encompasses a requirement of disclosure of all information necessary for computation of the individual's tax liability as that liability is defined by statutory provisions and commission rules; therefore regardless of whether Tax Form 40 should have been promulgated as an agency rule under the Administrative Procedure Act, defendant was obligated to file income tax returns that divulged the financial information necessary for calculation of his income tax, and writ of mandate compelling defendant to comply was proper. *Idaho State Tax Comm'n v. Beacom*, 131 Idaho 569, 961 P.2d 660 (Ct. App. 1998).

Discovery Device.

The legislature intended that the use of mandamus to compel the filing of tax returns should be a discovery proceeding, not an enforcement of payment proceeding; to require a showing as a predicate to issuance of the writ that the taxpayer has earned taxable income and the amount of his tax liability would in effect render the filing of a return redundant

and would duplicate the enforcement provisions provided by § 63-3070 (now repealed). *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

Pursuant to its discovery purpose, the writ of mandate properly directs only the filing of a return in the form required by the tax laws and regulations and does not purport to mandate the content of the return in terms of the information to be furnished. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

Evidence.

Where the court found as a predicate to issuance of the writ that the taxpayer received a certain amount of gross wages for personal services from his employer for the two years in question, and that the returns he had theretofore filed provided no information concerning income, these findings supported the issuance of the writ of mandate. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

Evidence Supporting Imprisonment.

The application for writ of habeas corpus did not show the petitioner to be unlawfully imprisoned or restrained in light of the established facts that he failed to file a tax return containing the required verification or certification and such failure to file a return with a proper verification or certification constituted a refusal and failure to obey a writ of mandate without just excuse and justified his imprisonment pursuant to § 7-314 until the writ was obeyed; accordingly, the application for a writ of habeas corpus would be denied and the writ would not issue. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

Filing of Improper Return.

The filing of a return with the verification or certification mutilated or obliterated did not constitute the filing of a return as required by the governing statute and as mandated by the court in a mandamus proceeding. *Mitchell v. Agents of State*, 105 Idaho 419, 670 P.2d 520 (1983).

Grounds for Refusal.

Just as a witness cannot refuse to testify on the ground that he will incriminate himself by committing perjury if he does, taxpayers cannot refuse to file income tax returns on the ground that they contemplate committing a crime, such as filing a criminally evasive or fraudulent return. *Idaho State Tax Comm'n v. Payton*, 107 Idaho 258, 688 P.2d 1163 (1984).

Retroactive Application.

This section is a remedial measure, and its application to individuals who had not filed returns which were past due at the time of the adoption of the statute is not invalid. *Mitchell*

v. Agents of State, 105 Idaho 419, 670 P.2d 520 (1983).

Self-Incrimination.

Unspecific claims that the filing of a tax return may be self-incriminatory do not justify a refusal to file. Idaho State Tax Comm'n v. Payton, 107 Idaho 258, 688 P.2d 1163 (1984).

The defendant's outright refusal to answer any questions on a tax return is not, per se, protected by the fifth amendment. Idaho State Tax Comm'n v. Peterson, 107 Idaho 260, 688 P.2d 1165 (1984).

Cited in: State v. Gibson, 114 Idaho 771, 760 P.2d 1187 (Ct. App. 1988).

63-3031. Joint returns. — (a) A husband and wife may make a single return jointly even though one of the spouses has neither gross income nor deductions, except as provided below:

(1) No joint return shall be made if, during the current taxable year, either the husband or the wife is a nonresident alien of the United States, unless they elect to file a joint return for federal purposes pursuant to sections 6013(g) and (h) of the Internal Revenue Code.

(2) No joint return shall be made if husband and wife have different taxable years, unless the difference in taxable years is the result of the death of either or both of them; except that if either spouse changes his annual accounting period during the taxable year, or if the surviving spouse remarries within the taxable year no such return shall be filed.

(3) For the purpose of subsection (2) of this section, the joint return, if permitted, shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

(4) In the case of death of one spouse or both spouses the joint return with respect to the decedent may be made only by his executor or administrator; except that in the case of the death of one spouse the joint return may be made by the surviving spouse with respect to both himself and the decedent if no return for the taxable year has been made by the decedent, no executor or administrator has been appointed, and no executor or administrator is appointed before the last day prescribed by law for filing the return of the surviving spouse. If an executor or administrator of the decedent is appointed after the making of the joint return by the surviving spouse, the executor or administrator may disaffirm such joint return by making, within one (1) year after the last day prescribed by law for filing the return of the surviving spouse, a separate return for the taxable year of the decedent with respect to which the joint return was made, in which case the return made by the survivor shall constitute his separate return.

(b) Definitions. For purposes of this section—

(1) The status as husband and wife of two (2) individuals having taxable years beginning on the same day shall be determined

(A) if both have the same taxable year — as of the close of such year; and

(B) if one dies before the close of the taxable year of the other — as of the time of such death; and

(2) An individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married; and

(3) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

(c) Husbands and wives shall, if they elect to file a joint return for federal purposes, be required to file a joint return for state purposes. [1959, ch. 299, § 31, p. 613; am. 1961, ch. 328, § 14, p. 622; am. 1969, ch. 319, § 10, p. 982; am. 1980, ch. 53, § 1, p. 109; am. 1982, ch. 111, § 1, p. 313.]

STATUTORY NOTES

Cross References. — Additional tax required when filing income tax return, § 63-3082.

Federal References. — Sections 6013(g) and (h) of the Internal Revenue Code, referred to in subdivision (a)(1), are compiled as

26 U.S.C. § 6013(g), (h).

Effective Dates. — Section 2 of S.L. 1982, ch. 111 declared an emergency and provided that the act should be in full force and effect on and after approval retroactive to January 1, 1982. Approved March 18, 1982.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 594.

63-3032. Time for filing income tax returns. — (1) Except as provided in section 63-3033, Idaho Code:

(a) Returns made on the basis of the calendar year shall be filed in the office of the Idaho state tax commission on or before the fifteenth day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed in the office of the Idaho state tax commission on or before the fifteenth day of the fourth month following the close of the fiscal year.

(b) In the case of a return for any period of less than one (1) year, the return shall be filed on or before the date required in this section, or on or before such date as required for such tax period by the Internal Revenue Code, whichever is later.

(2) Returns made by farmer's cooperatives to the extent the cooperative is taxable under section 63-3025B, Idaho Code, shall be due on or before September 15 following the close of the calendar year or on or before the fifteenth day of the ninth month following the close of the fiscal year. The provisions of section 63-3033, Idaho Code, shall not apply to returns due under this subsection. [1959, ch. 299, § 32, p. 613; am. 1988, ch. 149, § 1, p. 270; am. 1997, ch. 57, § 9, p. 95; am. 2000, ch. 26, § 6, p. 45.]

STATUTORY NOTES

Compiler's Notes. — The name tax collector was changed to state tax commission under the authority of S.L. 1967, ch. 125, § 7.

Effective Dates. — Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

JUDICIAL DECISIONS

Cited in: State v. Gibson, 114 Idaho 771, 760 P.2d 1187 (Ct. App. 1988).

63-3033. Extension of time. — (a) Taxpayers shall have an automatic extension of time for filing any return, declaration, statement or other

document required by this chapter for a period of six (6) months if on or before the unextended due date the taxpayer has paid at least eighty percent (80%) of the total tax due on the income tax return when it is filed, or the total tax due on the income tax return for the prior year if a return was filed for the prior year.

(b) If, on the unextended due date, the payment required to meet the provisions of subsection (a) of this section, after consideration of any previous credits or payments applicable to the return, is fifty dollars (\$50.00) or less, such payment shall not be required in order to qualify for the extension. However, interest shall accrue as provided in subsection (f) of this section. Payment of any balance of tax is due on the earlier of the extended due date or the date the return is filed.

(c) Taxpayers residing outside any of the United States and Puerto Rico (including persons in military or naval service) shall have an automatic extension of time within which to file income tax returns with this state for a period which shall expire on the fifteenth day of the sixth month following the close of their taxable year.

(d) Individuals who are entitled to extensions for filing federal income tax returns as a result of the application of the provisions of sections 911 and 7508 of the Internal Revenue Code, shall be entitled to extensions of time for the same period for filing income tax returns with the state of Idaho subject to the requirements imposed in implementation of the indicated sections.

(e) Any taxpayer entitled to an extension under subsection (c) or (d) of this section shall attach a statement to his return claiming his right to the extension.

(f) If the amount of payment made under subsection (a) of this section is less than eighty percent (80%) of the total tax due under the provisions of this chapter and is less than the amount of the total tax due on the income tax return for the prior year, except as permitted by subsection (b) of this section, a penalty may be applied to the total of the balance due unless reasonable cause can be established. The penalty shall be:

(1) If the taxes for the taxable year are paid on or before the extended due date, two percent (2%) per month from the original due date to the date of payment.

(2) If the taxes for the taxable year are not paid on or before the extended due date, the penalty provided in section 63-3046(c), Idaho Code, from the original due date.

(g) In all cases of an extension of time in which to file any return, interest shall be paid on any tax due from the original due date to date of payment at the rate provided in section 63-3045, Idaho Code. [1959, ch. 299, § 33, p. 613; am. 1965, ch. 316, § 5, p. 880; am. 1969, ch. 319, § 11, p. 982; am. 1976, ch. 77, § 1, p. 249; am. 1976, ch. 270, § 1, p. 913; am. 1980, ch. 5, § 1, p. 10; am. 1981, ch. 290, § 3, p. 597; am. 1992, ch. 49, § 2, p. 151; am. 1993, ch. 3, § 5, p. 5; am. 1997, ch. 57, § 10, p. 95; am. 1998, ch. 54, § 1, p. 207; am. 1999, ch. 34, § 1, p. 71; am. 2001, ch. 53, § 1, p. 95; am. 2005, ch. 23, § 5, p. 61; am. 2006, ch. 56, § 1, p. 166.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 56, deleted “or payment” following “or other document” in subsection (a) and added “Payment of any balance of tax is due on the earlier of the extended due date or the date the return is filed” at the end of subsection (b).

Federal References. — Sections 911 and 7508 of the Internal Revenue Code are compiled as 26 U.S.C. §§ 911 and 7508.

Compiler’s Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Section 3 of S.L. 1976, ch. 77, read: “This act designated as House Bill No. 378, and another act designated as House Bill No. 377, both amend section 63-3033, Idaho Code. It is not the intention of this legislature by this enactment to supersede or repeal the act designated as House Bill No. 377. The Idaho Code Commission is directed to compile both bills if enacted and approved, as amendments to section 63-3033, Idaho Code.”

Section 5 of S.L. 1976, ch. 270, read: “This act designated as House Bill No. 377, and another act designated as House Bill No. 378, both amend section 63-3033, Idaho Code. It is not the intention of this legislature by this enactment to supersede or repeal the act designated as House Bill No. 378. The Idaho code commission is directed to compile both bills if enacted and approved, as amendments to section 63-3033, Idaho Code.” Therefore the above section incorporates both amendments.

Chapter 77, § 1 in subsection (a) added clauses (2) and (3), deleted the words “except that” preceding “taxpayers residing or traveling outside” at the beginning of clause (4), deleted “(15th)” following “expire on the fifteenth” and “(6th)” following “of the sixth” and added subsection (b); chapter 270, § 1 in subsection (c) changed the interest rate from six per cent to eight per cent.

Effective Dates. — Section 2 of S.L. 1976, ch. 77 declared an emergency and provided the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 10, 1976.

Section 4 of S.L. 1976, ch. 270 declared an emergency and provided the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 31, 1976.

Section 2 of S.L. 1998, ch. 54 provided this act shall be in full force and effect on and after January 1, 1999, and shall apply to returns first due on or after that date.

Section 3 of S.L. 1999, ch. 34 declared an emergency retroactive to January 1, 1999 and approved March 3, 1999.

Section 2 of S.L. 2001, ch. 53 provided: “This act shall be in full force and effect on and after January 1, 2002 and shall first apply to tax returns due on and after January 1, 2002.”

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

63-3034. Payment of tax. — (a) The entire tax imposed by this chapter shall be paid to the state tax commission on or before the date, including any extensions of the due date, upon which the return must be filed with the state tax commission, provided that payments made before the termination of the year for which taxes are paid shall be (1) based upon the taxpayer’s estimate of total state tax liability or (2) when the estimated gross income of any such taxpayer is more than six hundred dollars (\$600) and the state tax commission deems it necessary to insure compliance with this chapter, the commission may require any persons subject to this chapter to place with the commission such security as the commission may determine.

(b) The amount of the security shall be fixed by the tax commission but shall not be greater than twice the amount of tax estimated to be due, or twenty thousand dollars (\$20,000), whichever is less. The amount of the security may be increased or decreased by the tax commission at any time within the limitations set forth in this subsection.

(c) If the tax commission finds that a taxpayer of whom security is required fails to furnish the security, the tax commission may issue a jeopardy assessment as prescribed by section 63-3065, Idaho Code, and take appropriate action to effect collection of the required security.

(d) The tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale; such notice may be given personally or by mail addressed to the person at the address furnished to the tax commission and as it appears in the records of the tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security. [1959, ch. 299, § 34, p. 613; am. 1961, ch. 328, § 15, p. 622; am. 1965, ch. 316, § 6, p. 880; am. 1976, ch. 284, § 1, p. 983; am. 1997, ch. 57, § 11, p. 95.]

STATUTORY NOTES

Compiler's Notes. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961. See S.L. 1961, ch. 328, § 30, compiled as note to § 63-3077.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 596, 599.

63-3035. State withholding tax on percentage basis — Withholding, collection and payment of tax. — (a) Every employer who is required under the provisions of the Internal Revenue Code to withhold, collect and pay income tax on wages or salaries paid by such employer to any employee (other than employees specified in Internal Revenue Code section 3401(a)(2)) shall, at the time of such payment of wages, salary, bonus or other emolument to such employee, deduct and retain therefrom an amount substantially equivalent to the tax reasonably calculated by the state tax commission to be due from the employee under this chapter. The state tax commission shall prepare tables showing amounts to be withheld, and shall supply same to each employer subject to this section. In the event that an employer can demonstrate administrative inconvenience in complying with the exact requirements set forth in these tables, he may, with the consent of the state tax commission and upon application to it, use a different method which will produce substantially the same amount of taxes withheld. Every employer making payments of wages or salaries earned in Idaho, regardless of the place where such payment is made:

- (1) shall be liable to the state of Idaho for the payment of the tax required to be deducted and withheld under this section and shall not be liable to any individual for the amount deducted from his wages and paid over in compliance or intended compliance with this section;
- (2) must pay to the state tax commission monthly on or before the 20th day of the succeeding month, or at such other times as the state tax commission may allow, an amount of tax which, under the provisions of this chapter, he is required to deduct and withhold;

(3) shall register with the state tax commission, in the manner prescribed by it, to establish an employer's withholding account number. The account number will be used to report all amounts withheld, for the annual reconciliation required in this section, and for such other purposes relating to withholding as the state tax commission may require; and

(4) must, notwithstanding the provisions of paragraphs (1) and (2) of this subsection, if the amount of withholding of such employer for the preceding twelve (12) month period equals or exceeds two hundred forty thousand dollars (\$240,000) per annum or an average of twenty thousand dollars (\$20,000) per month per annum, pay to the state tax commission on the basis of withholding periods which begin on the 16th day of the month and end on the 15th day of the following month, and payment shall be made not later than five (5) days after the end of the withholding period.

(5) If a payment required pursuant to subsection (a)(2) or (a)(4) of this section is not made or is made delinquently or if made is not equal to the withholding required under this section the state tax commission may treat the failure as a failure to file a return and may take administrative and judicial actions as authorized by this chapter in the case of a failure to file a return. Interest, at the rate provided by section 63-3045, Idaho Code, shall apply to any such underpayment.

(6) Commencing in 2006, the state tax commission shall determine whether the threshold amounts established by subsection (a)(4) of this section must be adjusted to reflect fluctuations in the cost of living. The commission shall base its determination on the cumulative effect of the annual cost-of-living percentage modifications determined by the United States secretary of health and human services pursuant to 42 USC 415(i). When the cumulative percentage applied to the monthly threshold amount equals or exceeds five thousand dollars (\$5,000), the commission shall promulgate a rule adjusting the monthly threshold amount by five thousand dollars (\$5,000) and making the necessary proportional adjustment to the annual threshold amount. The rule shall be effective for the next succeeding calendar year and each year thereafter until again adjusted by the commission. The tax commission shall determine subsequent adjustments in the same manner, in each case using the year of the last adjustment as the base year.

(b)(1) In addition to the payments required pursuant to subsections (a)(2) and (a)(4) of this section, every employer shall file a return upon such form as shall be prescribed by the state tax commission, but not more frequently than annually, or as required pursuant to any agreement between the state tax commission and the department of labor under section 63-3035B, Idaho Code, unless a shorter filing period and due date is prescribed by the state tax commission. The return shall be due on the last day of the month following the end of the period to which the return relates. The return shall show, for the period to which it relates, the total amount of wages, salary, bonus or other emolument paid to his employees, the amount deducted therefrom in accordance with the provisions of the Internal Revenue Code, the amount deducted therefrom in accordance

with the provisions of this section, the amount of any previous payments made pursuant to this section, and such pertinent and necessary information as the state tax commission may require.

(2) Every employer making a declaration of withholding as provided herein shall furnish to the employees annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and on or before the last day of February every employer shall file a copy thereof with the state tax commission. Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media, machine readable form or electronic means, as defined in the Idaho uniform electronic transaction act, may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media, machine readable form or electronic means. Such rules may provide a different due date for such returns which shall be no later than the date employers are required to file such returns with the internal revenue service or the social security administration.

(c) All moneys deducted and withheld by every employer shall immediately upon such deduction be state money and every employer who deducts and retains any amount of money under the provisions of this chapter shall hold the same in trust for the state of Idaho and for the payment thereof to the state tax commission in the manner and at the times in this chapter provided. Any employer who does not possess real property situated within the state of Idaho, which, in the opinion of the state tax commission, is of sufficient value to cover his probable tax liability, may be required to post a surety bond in such sum as the state tax commission shall deem adequate to protect the state.

(d) The provisions of this chapter relating to additions to tax in case of delinquency, and penalties, shall apply to employers subject to the provisions of this section and for these purposes any amount deducted, or required to be deducted and remitted to the state tax commission under this section, shall be considered to be the tax of the employer and with respect to such amount he shall be considered the taxpayer.

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted.

(f) This section shall in no way relieve any taxpayer from his obligation of filing a return at the time required under this chapter, and, should the

amount withheld under the provisions of this section be insufficient to pay the total tax of such taxpayer, such unpaid tax shall be paid at the time prescribed by section 63-3034, Idaho Code.

(g) An employee receiving wages shall on any day be entitled to not more than, but may claim fewer than, the number of withholding exemptions to which he is entitled under the Internal Revenue Code for federal income tax withholding purposes.

(h) An employer shall use the exemption certificate filed by the employee with the employer under the withholding exemption provisions of the Internal Revenue Code in determining the amount of tax to be withheld from the employee's wages or salary under this chapter. The tax commission may redetermine the number of withholding exemptions to which an employee is entitled under subsection (g) of this section, and the state tax commission may require such exemption certificate to be filed on a form prescribed by the commission in any circumstance where the commission finds that the exemption certificate filed for Internal Revenue Code purposes does not properly reflect the number of withholding exemptions to which the employee is entitled under this chapter. In no event shall any employee give an exemption certificate which claims a higher number of withholding exemptions than the number to which the employee is entitled by subsection (g) of this section. [1959, ch. 299, § 35, p. 613; am. 1963, ch. 352, § 1, p. 1013; am. 1965, ch. 316, § 7, p. 880; am. 1967, ch. 294, § 6, p. 828; am. 1969, ch. 319, § 12, p. 982; am. 1971, ch. 38, § 1, p. 84; am. 1982, ch. 219, § 1, p. 594; am. 1983, ch. 4, § 13, p. 6; am. 1983, ch. 20, § 2, p. 56; am. 1986, ch. 132, § 1, p. 339; am. 1987, ch. 33, § 1, p. 54; am. 1989, ch. 180, § 1, p. 447; am. 1990, ch. 34, § 2, p. 49; am. 1993, ch. 5, § 1, p. 16; am. 1994, ch. 40, § 1, p. 66; am. 1995, ch. 83, § 4, p. 238; am. 1995, ch. 111, § 32, p. 347; am. 1999, ch. 41, § 1, p. 80; am. 2001, ch. 56, § 1, p. 100; am. 2003, ch. 296, § 1, p. 802; am. 2004, ch. 103, § 2, p. 363; am. 2006, ch. 195, § 3, p. 599.]

STATUTORY NOTES

Amendments. — This section was amended by two 1995 acts — ch. 83, § 4, effective retroactively to January 1, 1995, and ch. 111, § 32, effective January 1, 1996 — which do not appear to conflict and have been compiled together.

The 1995 amendment, by ch. 83, § 4, in subsection (b)(2) substituted “rules” for “regulations” and in subsection (e), following “three (3) years from the due date of his return”, inserted “, without regard to extensions,”.

The 1995 amendment, by ch. 111, § 32, in subsection (b)(2) also substituted “rules” for “regulations” and in subsection (e), in the second sentence, inserted “Idaho” preceding “taxable income” and following “taxable income” deleted “as computed under the provisions of this act, as the same has been or may hereafter be amended”.

The 2006 amendment, by ch. 195, rewrote

the second sentence of subsection (b)(2), which formerly read: “Every employer who is required, under Internal Revenue Code section 6011, to file returns on magnetic media or in other machine readable form may be required by rules of the state tax commission to file corresponding state returns on similar magnetic media or other machine readable form.”

Legislative Intent. — Section 1 of S.L. 1998, ch. 230 provided: “STATEMENT OF LEGISLATIVE INTENT. It is the purpose of this act [which, in part, amended this section] to reduce tax compliance burdens of employers and to permit the department of labor and the state tax commission to make the most efficient use of their powers and resources by enabling the department and the commission to cooperate in matters relating to employment security taxes and income tax withholding through common registration of employ-

ers, common tax reporting forms, centralized filing of returns and receipting of revenue and effective exchange of information.”

Federal References. — Section 3401 of the Internal Revenue Code, referred to in subsection (a), and § 6011, referred to in subdivision (b)(2), are compiled as 26 U.S.C. §§ 3401 and 6011.

Compiler's Notes. — Section 1 of S.L. 1983, ch. 4 read: “This act shall be known as ‘The 1983 Idaho Emergency Fiscal Responsibility and Recovery Act.’”

Effective Dates. — Section 2 of S.L. 1963, ch. 352 provided that the act should take effect from and after July 1, 1963.

Section 2 of S.L. 1971, ch. 38, provided that the act should be in full force and effect on and after July 1, 1971.

Section 17 of S.L. 1983, ch. 4 read: “(1) An emergency existing therefor, which emergency is hereby declared to exist, Section 3 and 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1982.

“(2) An emergency existing therefor, which emergency is hereby declared to exist, Section 12 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1983.

“(3) An emergency existing therefor, which

emergency is hereby declared to exist, Sections 2, 5, 6, 7, 8, 9, 10 and 16 of this act shall be in full force and effect on and after passage and approval.

“(4) An emergency existing therefor, which emergency is hereby declared to exist, Sections 13, 14 and 15 of this act shall be in full force and effect on and after March 1, 1983.

“(5) Section 11 of this act shall be in full force and effect on and after July 1, 1983.” February 18, 1983.

Section 5 of S.L. 1995, ch. 83, declared an emergency and provided that this act shall be in full force and effect retroactively to January 1, 1995. Approved March 10, 1995.

Section 3 of S.L. 1999, ch. 41 declared an emergency retroactive to January 1, 1999 and approved March 8, 1999.

Section 2 of S.L. 2003, ch. 296 provided that the act should take effect on and after July 1, 2005.

Section 3 of S.L. 2004, ch. 103 declared an emergency retroactively to January 1, 2004. Approved March 19, 2004.

Section 3 of S.L. 2004, ch. 103 provided § 2 shall be in full force and effect on and after July 1, 2005.

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

63-3035A. State income tax withholding tax on lottery winnings.

— (1) Whenever the Idaho state lottery is required by the Internal Revenue Code to withhold, collect and pay over income tax on any prize, proceeds or winnings it shall, at the time of payment of such prize, proceeds or winnings to the recipient, withhold from the payment an amount equal to the maximum percentage applicable to individuals under section 63-3024, Idaho Code, of the prize, proceeds or winnings to be applied to Idaho income taxes due from the recipient.

(2) The state tax commission shall accept amounts withheld according to this section as payment by the recipient of the amount so withheld of income taxes imposed on the recipient for the taxable year in which the prize, proceeds or winnings are includable in the recipient's Idaho taxable income.

(3) When the total amount withheld (along with other credits due, withholding or payments attributable to the taxpayer) exceeds the taxes due from the recipient, the state tax commission shall, after examining the state income tax return filed by the recipient, refund the amount of the excess withheld in the manner provided for refunds of withholding under section 63-3035, Idaho Code.

(4) The Idaho state lottery shall remit the amounts withheld to the state tax commission on or before the date similar payments and reports are due to the internal revenue service.

(5) The Idaho state lottery shall furnish to the recipient, not later than thirty (30) days after the end of the calendar year, a record of the tax withheld during that year and shall, not later than the last day of the following February, file a copy of the record with the state tax commission.

(6) The Idaho state lottery and the state tax commission may agree to different times and procedures for making the remittances or reports required in this section.

(7) Nothing in this section relieves any taxpayer from an obligation to file a return or pay taxes at the time and in the manner required by this chapter. [I.C., § 63-3035A, as added by 1997, ch. 382, § 3, p. 1327; am. 2001, ch. 56, § 2, p. 100; am. 2004, ch. 30, § 6, p. 53.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1997, ch. 393 read: “It is the purpose of this act to provide a source of funds for county juvenile probation services and for substance abuse programs in the public schools. It is the Legislature’s intent that the schools and county juvenile probation services establish substance abuse programs which will be available to youth through the schools or county juvenile probation services. It is not the intent of the Legislature to prohibit county juvenile probation services from utilizing their share of these funds to perform their other responsibilities under the Juvenile Corrections Act of 1995. The youth of Idaho will be best served in their communities through the combined efforts of public school administrators and county juvenile probation officers to provide an integrated system of programs designed to meet the needs of youth with substance abuse problems and those requir-

ing juvenile probationary services. It is the Legislature’s intent that the schools and county juvenile probation services act in concert to deliver services to affected youth in the most efficient manner and avoid duplication and competition of programs. It is the Legislature’s further intent that all the funds available for distribution as a result of state income taxes imposed on lottery prizes be appropriated equally to the public school income fund and county juvenile probation services in accordance with the formula provided in Section 63-3067, Idaho Code, if maximal use is being made of these funds to address the needs of youth in their communities.”

Effective Dates. — Section 4 of S.L. 1997, ch. 382 provided that the act should take effect on and after January 1, 1998.

Section 7 of S.L. 2004, ch. 30 declared an emergency retroactively to January 1, 2004. Approved March 10, 2004.

63-3035B. Joint power authorization. — The state tax commission may, pursuant to sections 67-2326 through 67-2333, Idaho Code, enter into an agreement with the department of labor providing for the joint administration of employment security taxes and income tax withholding through common registration of employers, common tax reporting forms, centralized filing of returns and receipting of revenue and effective exchange of information. [I.C., § 63-3035B, as added by 1998, ch. 230, § 3, p. 782.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1998, ch. 230 provides: “STATEMENT OF LEGISLATIVE INTENT. It is the purpose of this act [which, in part, added this section] to reduce tax compliance burdens of employers and to permit the department of labor and the state tax commission to make the most efficient use of their powers and resources by enabling the department and the commission

to cooperate in matters relating to employment security taxes and income tax withholding through common registration of employers, common tax reporting forms, centralized filing of returns and receipting of revenue and effective exchange of information.”

Effective Dates. — Section 7 of S.L. 1998, ch. 230 provides that this act should take effect on and after January 1, 1999.

63-3035C. Revocation and suspension of withholding accounts — Penalties. — (1) An income tax withholding account issued under section 63-3035, Idaho Code, shall be held only by persons actively engaged in activities requiring such an account under this chapter. Any person not so

engaged shall forthwith cancel his account number by notifying the state tax commission.

(2) Whenever any person fails to comply with any provision of this chapter relating to the withholding, reporting or payment of income tax withholding or any rules of the commission relating to such withholding prescribed and adopted under this chapter, the state tax commission may revoke or suspend any withholding account held by the person or may deny a new account to such person.

(3) The state tax commission may revoke the withholding account of a person not actively engaged in activities requiring an account under section 63-3035, Idaho Code.

(4) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3045, Idaho Code, which shall be subject to review as provided in that section.

(5) A withholding account, held by a person who for a period of twelve (12) consecutive months reports no income tax withholding due under this chapter, shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the account was issued.

(6) A person who engages in activities requiring a withholding account under this chapter without such an account or after an account has been revoked or suspended, and any person who is a responsible person, as defined in section 63-3078, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-3045, Idaho Code. [I.C., § 63-3035C, as added by 2006, ch. 60, § 5, p. 186.]

63-3036. State withholding tax for farmers. — (1) Every farmer who is an employer required by the provisions of the Internal Revenue Code to withhold, collect, and pay income tax on wages paid by such employer to any employee shall at the time of the payment of wages, salaries, bonuses or other emoluments to an employee, deduct and retain therefrom an amount determined in accordance with section 63-3035, Idaho Code, and the amount so withheld and deducted shall be held by said farmer-employer in trust for the state of Idaho and for the payment thereof to the state tax commission. Provided, that no tax need be withheld from an employee whose wages, salaries, bonuses and other emoluments total less than one thousand dollars (\$1,000) for the tax year.

(2) The tax so withheld by a farmer-employer subject to this section shall be paid to the state tax commission on or before the date required by subsection (b)(1) of section 63-3035, Idaho Code.

(3) The farmer-employer shall deliver to the state tax commission a return upon such form as shall be prescribed by said state tax commission showing the amounts of wages, salaries, bonuses or other emoluments paid to his employee, the amount deducted therefrom in accordance with this section, and such other pertinent and necessary information as the state tax

commission may require on or before the date payments required by this section are due.

(4) The farmer-employer making such a deduction as provided for in this section shall furnish to the employee annually, but not later than thirty (30) days after the end of the calendar year, a record of the amount of the tax withheld from such employee on forms to be prescribed, prepared and furnished by the state tax commission and at the same time every employer shall file a copy thereof with the state tax commission. The provisions of subsections (d), (e), (f), (g) and (h) of section 63-3035, Idaho Code, shall be applicable to the tax withheld by the farmer-employer under this section. [1959, ch. 299, § 36, p. 613; am. 1965, ch. 316, § 8, p. 880; am. 1967, ch. 294, § 7, p. 828; am. 1969, ch. 319, § 13, p. 982; am. 1990, ch. 34, § 3, p. 49; am. 1991, ch. 7, § 3, p. 18; am. 1993, ch. 5, § 2, p. 16; am. 1994, ch. 39, § 4, p. 57; am. 1999, ch. 41, § 2, p. 80; am. 2000, ch. 26, § 7, p. 45; am. 2005, ch. 23, § 6, p. 61.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1998, ch. 230 provides: "STATEMENT OF LEGISLATIVE INTENT: It is the purpose of this act [which, in part, amended this section] to reduce tax compliance burdens of employers and to permit the department of labor and the state tax commission to make the most efficient use of their powers and resources by enabling the department and the commission to cooperate in matters relating to employment security taxes and income tax withholding through common registration of employers, common tax reporting forms, centralized filing of returns and receipting of revenue and effective exchange of information."

Effective Dates. — Section 4 of S.L. 1990, ch. 34 declared an emergency and provided

that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1990. Approved March 7, 1990.

Section 6 of S.L. 1994, ch. 39, declared an emergency and provided that this act shall be in full force and effect on and after February 25, 1994, and retroactively to January 1, 1994. Approved February 25, 1994.

Section 7 of S.L. 1998, ch. 230 provided that this act shall be in full force and effect on and after January 1, 1999.

Section 8 of S.L. 2000, ch. 26 declared an emergency retroactively to January 1, 2000 and approved March 3, 2000.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005. Approved February 22, 2005.

63-3036A. Payment of estimated tax. — (a) Any corporation subject to this chapter which is required to make a payment of estimated taxes to the internal revenue service and will have an Idaho income tax liability of five hundred dollars (\$500) or more shall pay to the state tax commission estimated taxes due under this chapter.

(b) The provisions of the Internal Revenue Code relating to determination of reporting periods and the due dates of payments of estimated tax shall apply to the estimated payments due under this section.

(c) The amount of estimated tax due shall be determined as follows:

(1) Commencing with the calendar quarter that begins July 1, 1987, in the case of any corporation which was required to pay tax under this chapter for its immediately preceding taxable year, the amount of each quarterly payment for its current taxable year shall be twenty-five percent (25%) of the lesser of:

(i) The tax amount required to be reported on the return for the immediately preceding taxable year; or

(ii) Ninety percent (90%) of the tax required to be paid with the current year's return.

(2) Any corporation required to make estimated payments under this section and who makes annualized estimated payments under the Internal Revenue Code shall be permitted to annualize its estimated payments under this section in the manner prescribed by regulation of the state tax commission. Such regulations shall, to the extent practicable, follow the provisions of the Internal Revenue Code and the regulations thereunder relating to annualization of estimated payments.

(d) The amounts paid as estimated taxes pursuant to subsection (c) of this section shall be considered to be in part payment of the tax imposed by this chapter on the person reporting such estimated tax. The part payment shall apply to such tax for the tax year during which the reporting period for which the estimate is made occurs. In the event that such part payments, together with all other part payments, estimated payments, withheld taxes or other credits allowable against the taxes imposed by this chapter shall exceed the amount of tax due, the state tax commission shall refund such excess within the time and in the manner prescribed in section 63-3072(c), Idaho Code, relating to refund of taxes withheld by employers.

(e) The provisions of this section shall in no way relieve any person from any obligation to file a return under any provision of this chapter at the time such return may be due. In the event that the estimated payments required under this section, together with any other part payments, estimated payments, withheld taxes or other credits applicable to the same taxable year are less than the amount of taxes imposed by this chapter, the unpaid tax shall be paid at the time prescribed in section 63-3034, Idaho Code.

(f) The payment due for the first full reporting period occurring after the effective date of this act, and the payment due for each of the next three (3) succeeding reporting periods shall be one-half (1/2) of the amount otherwise due under this section. [I.C., § 63-3036A, as added by 1987, ch. 342, § 4, p. 725; am. 1991, ch. 7, § 4, p. 18; am. 2001, ch. 56, § 3, p. 100.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1987, ch. 342 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987.

"(2) Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1987, and tax payments due in September,

1987, under applicable federal law, shall correspondingly be due in September, 1987, under the provisions of this act." Approved April 6, 1987.

Section 5 of S.L. 1991, ch. 7 declared an emergency and provided that sections 1 and 2 of the act would be in full force and effect on and after its passage and approval retroactive to January 1, 1991. Approved February 12, 1991.

63-3037. Information returns. — (a) All persons, in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries and employers, making payment to another person of interest, rent, salaries, wages, except as provided by subsection (b) of section 63-3035, Idaho Code, and section 63-3036, Idaho Code, premiums, annuities, compensation, remunerations, emoluments, payments to subcontractors, other

fixed or determinable gains, profits and income, or corporate liquidation distributions shall make returns to the state tax commission setting forth the amount of such gains, profits and income, and the name and address of the recipient of such payment. Such returns shall correspond to the requirements of the Internal Revenue Code.

(b) The state tax commission may, by regulation, excuse the filing of any returns required by subsection (a) of this section when it finds that the returns required of any class or group of persons do not contribute to the efficient administration of the taxes imposed by this chapter. [1959, ch. 299, § 37, p. 613; am. 1961, ch. 328, § 16, p. 622; am. 1972, ch. 287, § 1, p. 723; am. 1990, ch. 77, § 1, p. 160.]

STATUTORY NOTES

Compiler's Notes. — The name tax collector was changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7 (§ 63-3402a).

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable

years beginning January 1, 1961.

Section 2 of S.L. 1972, ch. 287 declared an emergency and provided the act should be in full force and effect retroactively to January 1, 1972. Approved March 27, 1972.

63-3038. Administration. — It shall be the duty of the state tax commission of the state of Idaho as established in chapter 1 of title 63, Idaho Code, to administer and enforce the provision of this title. The state tax commission is authorized to designate deputies and employees to specifically administer the provisions of this title and such deputies and employees may be authorized to act in the name of the state tax commission and in its place and stead, provided, however, that such designation shall be made in writing. [1959, ch. 299, § 38, p. 613; am. 1998, ch. 53, § 1, p. 207.]

STATUTORY NOTES

Compiler's Notes. — Section 12 of S.L. 1967, ch. 294, read: "In the event the office of the tax collector is merged with the state tax commission, determinations, jeopardy determinations, redeterminations, compromises, closing agreements and similar responsibilities required to be performed by the tax collector under the Idaho Income Tax Act and the Idaho Sales Tax Act shall be performed by

the member of the state tax commission assigned the duty of supervisor of the division of taxation involved." The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7, (§ 63-3402a).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 881-890.

63-3039. Rules and regulations — Publication of statistics and law. — (a) The state tax commission shall prescribe all needful rules and regulations for the enforcement of this act (which shall be deemed to include all interpretations and constructions of this act, which must be uniformly made, by the state tax commission) and shall prepare all forms which may be required of taxpayers. All rules or regulations and forms shall be printed

for general distribution and the state tax commission is hereby authorized to contract for such printing. The state tax commission may make a charge for each copy of rules and regulations which charge shall not exceed the actual cost of printing the same plus the actual expense of the state tax commission for postage or other handling costs but no charge shall be made for any form required of taxpayers. No rule or regulation shall become effective until thirty (30) days after the rule or regulation as published is made available to the public and each rule or regulation requiring compliance by a taxpayer shall have an effective date. The state tax commission is authorized to establish an annual charge for all rules, regulations and other publications of the commission and to receive subscriptions therefor which shall entitle the subscriber to delivery of such publications by mail as soon as the same are published.

(b) The state tax commission shall as soon as practicable after the effective date of this act adopt rules and regulations as provided herein. Such rules and regulations shall conform wherever practicable to the regulations promulgated by the commissioner for the Internal Revenue Code.

(c) Any law to the contrary notwithstanding, the state tax commission shall prepare and publish annually such statistics as are reasonably available with respect to the operation of the commission including pertinent statistics of the income reported, taxes collected, and such other matters as may be deemed valuable information for the public and also such information and statistics as the governor and/or the legislature may require from time to time.

(d) The state tax commission shall cause this act to be published in pamphlet form together with such amendments as may from time to time be made, which pamphlet shall include any rules or regulations then in effect and shall provide for the sale of the same to the public at a uniform price not to exceed the cost of printing plus the actual cost for postage and other handling charges incurred by the state tax commission. [1959, ch. 299, § 39, p. 613; am. 1961, ch. 328, § 17, p. 622; am. 1983, ch. 104, § 1, p. 223.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

For words "this act" see compiler's notes, § 63-3001.

The words "effective date of this act", re-

ferred to in subsection (b), means the effective date of S.L. 1959, Chapter 299, which was January 1, 1959.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

63-3039A. Rules and regulations — Publication of statistics and law. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3039A, as added by 1963, ch. 339, § 5, p. 971, providing for an

advisory board, was repealed by S.L. 1974, ch. 19, § 8.

63-3040. Examination of return and determination of tax. — As soon as practicable after the return is filed, the state tax commission shall examine it and shall determine the correct amount of the tax. [1959, ch. 299, § 40, p. 613.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector was abolished and the powers and duties transferred to the state tax commission and the name tax collector has been

changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7 (§ 63-3402a).

JUDICIAL DECISIONS

Cited in: Futura Corp. v. State Tax Comm'n, 92 Idaho 288, 442 P.2d 174 (1968); Bills v. State, Dep't of Revenue & Taxation,

110 Idaho 113, 714 P.2d 82 (Ct. App. 1986); Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 716 P.2d 1344 ((Ct. App. 1986)).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 596-601.

63-3041. Overpayments. — If the taxpayer has paid more than the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 63-3072, Idaho Code, as amended. In the event a joint return has been filed and one (1) spouse dies prior to issuance of credit or refund, the credit or refund may be granted the surviving spouse. In the event a joint return has been filed by a couple separated after filing of the return, the credit or refund may be equally divided between such persons unless a joint claim has theretofore been properly executed. [1959, ch. 299, § 41, p. 613; am. 1961, ch. 328, § 18, p. 622.]

STATUTORY NOTES

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 608-611.

63-3042. Examination of books and witnesses. — For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any tax payable under this act or the liability at law or in equity of any person in respect to any tax provided in this act or collecting any such liability, the state tax commission or its duly authorized deputy is authorized —

(a) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(b) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the commission or its deputy may deem proper, to appear before the commission or its delegate at a time and place named in the summons and to produce such books, papers, records or other data and/or give such testimony, under oath, as may be relevant or material to such inquiry; and taxpayers whose pertinent records are kept outside of the state must bring such records to Idaho for examination by the state tax commission upon request by it or a deputy, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept and there audit such records; and

(c) To take such testimony of the person concerned or summoned, under oath, as may be relevant or material to such inquiry.

A summons issued under the provisions of this section may be served by the state tax commission or its deputy or by any other person authorized to serve process under the laws of this state by a copy delivered in and to a person to whom it is directed; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

The time and place of examination pursuant to the provisions of this section shall be such time and place as may be fixed by the state tax commission or its deputy and as are reasonable under the circumstances, provided that in the case of a summons the date fixed for appearance before the state tax commission or its deputy shall not be less than twenty (20) days from the time of service of the summons.

No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. [1959, ch. 299, § 42, p. 613; am. 1963, ch. 339, § 6, p. 971; am. 1967, ch. 294, § 8, p. 828; am. 2003, ch. 10, § 6, p. 22.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

For words "this act", as referenced to in the first paragraph, see Compiler's Notes, § 63-3001.

Section 7 of S.L. 1963, ch. 339, read: "The provisions of this act are hereby declared to be separable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect

the validity of remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1963, ch. 339, read: "An emergency existing therefor, which emergency is hereby declared to exist, this act, upon its passage and approval, shall take effect and be in force retroactively for taxable years beginning on and after January 1, 1963; providing, however, that those provisions of Sections 3 and 4 which amend Idaho Code Sections 63-3022 and 63-3028, and relate solely to adjustments made necessary by the investment tax credit provisions of the Internal Revenue Code shall be effective and apply with respect to taxable years ending after December 31, 1961."

Section 7 of S.L. 2003, ch. 10 declared an emergency retroactively to January 1, 2003 and approved February 10, 2003.

JUDICIAL DECISIONS

Cited in: *Bills v. State*, Dep't of Revenue & Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986); *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 601.

63-3043. Contempt. — In case any person refuses to comply with any subpoena or order under this act or to produce or permit the examination or inspection of any books, papers or documents pertinent to any investigation or inquiry hereunder, or to testify to any matter regarding which he may lawfully be interrogated, such fact shall be reported by the state tax commission or a deputy commissioner, to the district court or the judge thereof of any district wherein such person resides or may be found, and such court or judge shall order such witness to attend and testify, or otherwise compel obedience to the lawful demands and requests of any of said officials; and on failure or refusal of any person to obey such order, he shall be dealt with as for contempt of court under the applicable provisions of chapter 6 of title 7, Idaho Code. [1959, ch. 299, § 43, p. 613; am. 1961, ch. 328, § 19, p. 622.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector was abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

For words "this act" see compiler's notes, § 63-3001.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

63-3044. Deficiency in tax. — As used in this act in respect of a tax imposed by this act the term "deficiency" means:

(1) The amount by which the tax imposed by this act exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or,

(2) If no amount is shown as the tax by the taxpayer upon his return, or if no return is made by the taxpayer, then the amount by which the tax exceeds the amounts previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed, or collected without assessment, shall first be decreased by the amounts previously abated, credited, refunded, or otherwise repaid in respect of such tax; or,

(3) Any amount of tax which is due and unpaid. [1959, ch. 299, § 44, p. 613; am. 1993, ch. 94, § 2, p. 224; am. 1994, ch. 172, § 1, p. 387; am. 2006, ch. 195, § 4, p. 599.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.
For words "this act" see Compiler's Notes, § 63-3001.

Amendments. — The 2006 amendment, by ch. 195, deleted the "(1)" designation from the first paragraph; redesignated former subsections (1)(a) to (c) as present subsections (1) to (3); and deleted former subsections (2) and (3), which read: "(2) A tax assessment shall be made by recording the liability of the taxpayer along with an identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The assessment shall be kept and maintained in a record in the office of the state tax commission in accordance with rules prescribed by the tax commission. Upon request of the taxpayer, the tax commission shall furnish the taxpayer a copy of the record of assessment. No tax commission activities to enforce collection of tax may be conducted, nor may a proceeding to collect a tax be instituted, until assessment of the tax has been made in accordance with the provisions of this section. Taxes and related interest may be assessed immediately upon

receipt of a tax return, amended return or other consent signed by the taxpayer or the taxpayer's authorized representative showing the taxes due. The tax commission may presume that the signature is the signature of the taxpayer or the taxpayer's authorized representative until the contrary is established by a preponderance of the evidence.

"(3) The making of an assessment is not required before the tax commission may conduct audits and investigations or make inquiries of taxpayers or other persons relating to matters within the tax commission's jurisdiction. The making of an assessment is not required before the tax commission may file a judicial action under section 63-3030A or 63-3064, Idaho Code, or actions for injunctive or declaratory relief."

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

JUDICIAL DECISIONS

Construction.

Record showed the taxpayer later decided to challenge the Idaho state tax commission's determination that the sale of a partnership interest did not qualify for a capital gains deduction, and with respect to that tax obligation, the taxpayer had paid it in full and there was no deficiency assessed under § 63-

3044(1), and therefore, § 63-3049(b) did not apply; thus, the taxpayer was not required to deposit an additional 20 percent in order to appeal the decision of the commission with respect to that issue. *Ambrose v. Idaho State Tax Comm'n*, 139 Idaho 741, 86 P.3d 455 (2004).

RESEARCH REFERENCES

A.L.R. — Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income

from joint tax return to obtain innocent spouse exemption from liability for tax. 161 A.L.R. Fed. 373.

63-3045. Notice of redetermination or deficiency — Interest. —

(1)(a) If, in the case of any taxpayer, the state tax commission determines that there is a deficiency in respect of the tax imposed by this title, the state tax commission shall, immediately upon discovery thereof, send notice of such deficiency to the taxpayer by registered or certified mail or by other commercial delivery service providing proof of delivery, which-

ever is the most cost efficient. The notice shall be sent to the taxpayer's last address known to the state tax commission. The notice of deficiency shall be accompanied by an explanation of the specific reason for the determination and an explanation of the taxpayer's right to appeal. Within sixty-three (63) days after such notice is mailed, the taxpayer may, at his option, file a protest in writing with the state tax commission and obtain redetermination of the deficiency.

(b) If the taxpayer files a protest with the tax commission within the period set forth in subsection (1)(a) of this section, and such protest does not comply with the rules of the tax commission and is therefore inadequate to perfect the taxpayer's right to a redetermination of the deficiency determination, then, the tax commission shall notify the taxpayer, in the same manner as set forth in subsection (1)(a) of this section, of such inadequacies, setting forth in said notice the corrective action to be taken by the taxpayer to perfect his protest. The taxpayer shall thereafter have twenty-eight (28) days from the date of said notice to perfect his protest.

(c) No assessment of a deficiency in respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(2) Following a protest, the taxpayer has the right to a hearing. The purpose of the hearing is to discuss the deficiency determination and the taxpayer's protest with a commissioner or duly authorized representative of the commission. The meeting shall be held informally and evidence shall be freely admitted regardless of the rules of evidence.

(3) Any hearing conducted under the provisions of this section may be conducted, in whole or in part, by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) A taxpayer has the right to be represented by, or be accompanied by, any person of his choice in any proceeding before the tax commission. If the taxpayer is not present at a proceeding, the representative of that taxpayer must be designated in writing by the taxpayer as shall be prescribed in administrative rules or in any manner acceptable to the tax commission.

(5) If the taxpayer does not file a protest with the state tax commission within the time prescribed in subsection (1)(a) of this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the state tax commission.

(6)(a) Interest shall apply to deficiencies in tax and refunds of tax. Interest shall not apply to any penalty or to unpaid accrued interest. Interest relating to deficiencies or refunds accruing after the original due date of the return, but not including extensions of the due date, shall be computed on the net of any underpayments and overpayments of a tax liability required to be shown as due on the same return.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency, shall be due and payable upon notice and demand from the

state tax commission and shall be collected as a part of the tax at the rate per annum determined under the provisions of subsection (6)(c) of this section from the date prescribed for the payment of the tax. In the event any of the deficiency is reduced by reason of a carryback of a net operating loss or a capital loss carryback, such reduction in deficiency shall not affect the computation of interest under this subsection for the period ending with the last day of the taxable year in which the net operating loss or capital loss arises.

(c) The rate of interest accruing during any calendar year, or portion thereof, upon any deficiency, or payable upon an overpayment or refund shall be two percent (2%) plus the rate determined under section 1274(d), Internal Revenue Code, by the secretary of the treasury of the United States as the midterm federal rate as it applies on September 15 of the immediately preceding calendar year rounded to the nearest whole number.

(7) When the time provisions contained in this section conflict with the provisions of section 63-4208, Idaho Code, relating to the assessment of taxes on illegal possession of controlled substances, the provisions of section 63-4208, Idaho Code, shall prevail. [1959, ch. 299, § 45, p. 613; am. 1965, ch. 316, § 9, p. 880; am. 1969, ch. 319, § 14, p. 982; am. 1971, ch. 302, § 4, p. 1242; am. 1976, ch. 270, § 1 [2], p. 913; am. 1981, ch. 290, § 1, p. 597; am. 1992, ch. 49, § 3, p. 151; am. 1993, ch. 94, § 3, p. 224; am. 1994, ch. 172, § 2, p. 387; am. 1996, ch. 40, § 5, p. 103; am. 1997, ch. 57, § 12, p. 95; am. 1998, ch. 51, § 2, p. 201; am. 2004, ch. 28, § 2, p. 45.]

STATUTORY NOTES

Federal References. — Section 1274 of the Internal Revenue Code, referred to in subdivision (6)(c) of this section, is compiled as 26 U.S.C. § 1274.

Effective Dates. — Section 4 of S.L. 1976, ch. 270 declared an emergency and provided the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 31, 1976.

Section 6 of S.L. 1996, ch. 40 declared an

emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1996. Approved February 23, 1996.

Section 6 of S.L. 1998, ch. 51, declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

JUDICIAL DECISIONS

Section Mandatory.

This section is not discretionary, but rather, is mandatory, and both the Supreme Court and the district court lacked any power to remit the interest that is mandated by the statute. *Union Pac. R.R. v. State Tax Comm'n*, 105 Idaho 471, 670 P.2d 878 (1983).

Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986); *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986); *Hamilton v. Tax Commission*, 119 Idaho 552, 808 P.2d 1297 (1991); *Ambrose v. Idaho State Tax Comm'n*, 139 Idaho 741, 86 P.3d 455 (2004).

Cited in: *Bills v. State, Dep't of Revenue &*

63-3045A. Assessment of tax. — (1) Except as provided in subsection (2) of this section, no tax commission activities to enforce collection of tax may be conducted, nor may a proceeding to collect a tax be instituted, until

taxes are assessed in accordance with the provisions of this section.

(a) Taxes and related interest, including revisions for mathematical errors, are assessed immediately upon receipt of a tax return, amended return or other consent signed by the taxpayer or the taxpayer's authorized representative showing the taxes due. The tax commission may presume that the signature is the signature of the taxpayer or the taxpayer's authorized representative until the contrary is established by a preponderance of the evidence.

(b) In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the state tax commission shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been asserted. Such a notice of additional tax due shall not be considered a notice of a deficiency nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this chapter.

(c) Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provisions of this chapter.

(d) For all other purposes of this chapter, a tax is deemed assessed when:

(i) A taxpayer fails to file a protest with the state tax commission within the time prescribed in section 63-3045, Idaho Code, or an action in district court or the board of tax appeals within the time prescribed in subsection (a) of section 63-3049, Idaho Code; or

(ii) Upon conclusion of any such proceeding for any amount upheld at that conclusion of such proceeding.

(2) An assessment is not required before the tax commission may conduct audits and investigations or make inquiries of taxpayers or other persons relating to matters within the tax commission's jurisdiction. The making of an assessment is not required before the tax commission may file a judicial action under section 63-3030A or 63-3064, Idaho Code, or actions for injunctive or declaratory relief.

(3) When taxes and related interest have been assessed, the state tax commission shall create a record of assessment by recording the liability of the taxpayer along with an identification of the taxpayer, the character of the liability assessed, the taxable period, if applicable, and the amount of the assessment. The record of an assessment shall be kept and maintained in a record in the office of the state tax commission in accordance with rules prescribed by the state tax commission. Upon request of the taxpayer, the state tax commission shall furnish the taxpayer a copy of the record of assessment.

(4) Penalties and additions to tax in the case of a deficiency shall be assessed in the same manner as the taxes and related interest. [I.C., § 63-3045A, as added by 1970, ch. 222, § 8, p. 621; am. 1987, ch. 86, § 1, p. 161; am. 1999, ch. 34, § 2, p. 71; am. 2006, ch. 195, § 5, p. 599.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 195, deleted “Mathematical error —” from the beginning of the section heading; added present subsections (1) and (1)(a); re-designated former subsections (a) to (c) as (1)(b) to (1)(d); deleted “The amount of tax which is shown to be due on the return (including revisions for mathematical errors) shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by

the state tax commission shall be deemed to be assessed on the date when payment is due” from the beginning of present subsection (1)(c); divided present subsection (1)(d) as the introductory paragraph in (1)(d) and (1)(d)(i); inserted “or the board of tax appeals” in present subsection (1)(d)(i); added subsection (1)(d)(ii) and subsections (2) to (4).

Effective Dates. — Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

63-3045B. Final decisions of the commission. — (1) If a taxpayer does not file a protest within the sixty-three (63) day period allowed, the notice of deficiency of the tax commission becomes final on the day following the end of the protest period.

(2) If a taxpayer files a protest, but does not perfect the protest, request a hearing, or does not submit additional evidence or documentation, or does not request additional time in which to respond, the notice of deficiency of the tax commission becomes final on the twenty-ninth day following the date the tax commission notified the taxpayer that the protest was not perfected, except that the tax commission may reduce the amount of the deficiency during the twenty-nine (29) day period.

(3) When a perfected protest has been filed, the state tax commission shall, within fourteen (14) days thereof, provide the taxpayer with a written acknowledgement of the protest. After the acknowledgement, a final decision of the tax commission must be rendered within one hundred eighty (180) days from either:

(a) A request in writing, in a form prescribed by rules of the tax commission, from the taxpayer for a final decision on that issue; if the taxpayer requests such a decision, the tax commission may refuse to accept additional evidence or documentation or refuse to allow an appearance at any proceeding with the commission or any representative of the commission during such one hundred eighty (180) day period.

(b) The conclusion of any hearing pursuant to section 63-3045(2), Idaho Code, and the taxpayer has not requested or received any extension of time to present additional evidence or testimony.

(4) A final decision may be held in abeyance, notwithstanding the requirements of subsection (3) of this section, with the prior approval in writing of the taxpayer.

(5) If a final decision of the tax commission is not rendered or the protest is not resolved by compromise, consent or withdrawal of the notice of deficiency determination within the time limits established by subsection (3) of this section, the notice of deficiency shall be null and void ab initio, with prejudice.

(6) A final decision of the tax commission shall be issued in writing and mailed or served upon the taxpayer within the time limits set forth herein. The final written decision of the tax commission shall, one hundred twenty

(120) days after the date of the final written decision, be available for public inspection and copying pursuant to the provisions of section 9-338, Idaho Code, except:

(a) The taxpayer's name, address, taxpayer identification number, social security number, permit number, or other identifying information shall be removed from the final written decision of the tax commission that is made available to the public; and

(b) Any proprietary or other identifying information contained in the written decision that the taxpayer requests be excised shall be excised by the tax commission in the final written decision made available to the public. The taxpayer must make such request in writing before ninety-one (91) days have elapsed after the date of the final decision.

(7) The tax commission shall label each written decision with a unique identification number and shall keep a list containing each decision number and the date of issuance, as excised in accordance with the provisions of this section. A decision shall serve as precedent for the tax commission in future protest determinations unless information excised, court decisions, changes in the Idaho Code, or changes in applicable administrative rules overrule, supersede, modify, distinguish, or otherwise make inapplicable the written decision of the tax commission. [I.C., § 63-3045B, as added by 1993, ch. 94, § 4, p. 224; am. 1994, ch. 172, § 3, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-3046. Penalties and additions to the tax in case of deficiency.

— (a) If any part of any deficiency is due to negligence or disregard of rules but without intent to defraud, five percent (5%) of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected and paid in the same manner as if it were a deficiency.

(b) If any part of any deficiency is due to fraud with intent to evade tax, then fifty percent (50%) of the total amount of the deficiency (in addition to such deficiency) shall be so assessed, collected and paid.

(c)(1) In the event the return required by this chapter is not filed on or before the due date (including extensions) of the return, there may be collected a penalty of five percent (5%) of the tax due on such returns for each month elapsing after the due date (including extensions) of such returns until the return is filed.

(2) In the event the return required by this chapter is filed but the tax shown thereon to be due is not paid, there may be collected a penalty of one-half percent (0.5%) of the tax due on such return for each month elapsing after the later of the due date of such return or the date the return was filed until the tax is paid.

(d)(1) If there is a substantial understatement of tax for any taxable year, there shall be added to the tax an amount equal to ten percent (10%) of the amount of any underpayment attributable to such understatement.

(2) For purposes of this subsection, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the greater of:

- (i) Ten percent (10%) of the tax required to be shown on the return for the taxable year, or
- (ii) Five thousand dollars (\$5,000).

(3) In the case of a corporation, paragraph (d)(2)(ii) of this section shall be applied by substituting ten thousand dollars (\$10,000) for five thousand dollars (\$5,000).

(4) For purposes of paragraph (d)(2) of this section, the term "understatement" means the excess of:

- (i) The amount of tax required to be shown on the return for the taxable year, over
- (ii) The amount of the tax imposed which is shown on the return.

(5) The amount of the understatement under paragraph (4) shall be reduced by that portion of the understatement which is attributable to:

- (i) The tax treatment of any item by the taxpayer if there is or was substantial authority for such treatment, or
- (ii) Any item with respect to which the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return.

(6) In the case of any item attributable to a tax shelter as defined in section 6661 of the Internal Revenue Code:

- (i) Paragraph (5)(ii) shall not apply, and
- (ii) Paragraph (5)(i) shall not apply unless (in addition to meeting the requirements of such paragraph) the taxpayer reasonably believed that the tax treatment of such item by the taxpayer was more likely than not the proper treatment.

(7) The state tax commission may waive all or any part of the addition to tax provided by this section on a showing by the taxpayer that there was reasonable cause for the understatement (or part thereof) and that the taxpayer acted in good faith.

(e)(1) Any person who fails to file a statement of payment to another person required by this chapter, including the duplicate statement of tax withheld on wages, on the date prescribed therefor (including any extension of time for filing) shall, be subject to a penalty of two dollars (\$2.00) for each month or part of a month each statement is not so filed, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed two thousand dollars (\$2,000).

(2) Any employer required to register under the provisions of section 63-3035, Idaho Code, who fails to register after receiving written notice from the state tax commission of the requirement to register shall be subject to a penalty of one hundred dollars (\$100) for each month or part of a month after the date of the notice during which the failure occurs.

(3) The penalties provided in this subsection shall not apply if the person shows that the failure to register is due to reasonable cause and not to willful neglect.

(f) If the penalty to be added to the tax by subsection (a), (b), (c)(1), (d) or (e) of this section or by section 63-3033, Idaho Code, is less than ten dollars (\$10.00), the penalty to be added to the tax shall be a minimum of ten dollars (\$10.00).

(g) Total penalties imposed under subsections (a), (c) and (d) of this section and under section 63-3033, Idaho Code, shall not exceed twenty-five percent (25%) of the tax due on the return.

(h) A processing charge to be determined and established annually by the state tax commission shall be collected from any person who draws or delivers a check, draft or order for the payment of money in complete or partial satisfaction of the tax imposed by this chapter if that person does not have sufficient funds in or credit with the bank or depository upon which the check, draft or order is drawn. Money collected under this subsection shall be paid to the state tax commission to defer costs of handling such checks, drafts or orders. [1959, ch. 299, § 46, p. 613; am. 1969, ch. 319, § 15, p. 982; am. 1981, ch. 176, § 1, p. 310; am. 1982, ch. 278, § 1, p. 709; am. 1983, ch. 211, § 1, p. 586; am. 1993, ch. 5, § 3, p. 16; am. 1997, ch. 57, § 13, p. 95; am. 1997, ch. 61, § 1, p. 119; am. 2000, ch. 19, § 1, p. 35; am. 2001, ch. 270, § 8, p. 977; am. 2002, ch. 35, § 10, p. 66.]

STATUTORY NOTES

Amendments. — This section was amended by two 1997 acts — ch. 57, § 13, effective January 1, 1997 and ch. 61, § 1, effective July 1, 1997 — which do not appear to conflict and have been compiled together.

The 1997 amendment, by ch. 57, § 13, in subsection (a) deleted “and regulations” following “rules” and deleted “except that no interest shall accrue upon the five per cent (5%) amount hereby imposed” following “deficiency” at the end of the subsection; in subsection (c) substituted “chapter” for “act” following “by this”; in present subsection (e)(1) substituted “chapter” for “act” following “required by this” and in subsection (f) substituted “subsection (a), (b), (c), (d) or (e) of this section” for “subsections (a), (b), (c), and (d) or (e) hereof”.

The 1997 amendment, by ch. 61, § 1, in the section heading added “Penalties and”; in subsection (a) deleted “and regulations” following “rules”; in subsection (c) substituted “chapter” for “act” following “required by this”; in subsection (e) added (1) following

“(e)”, substituted “chapter” for “act” following “required by this”, substituted “be subject to” for “unless he shows that such failure is due to reasonable cause and to wilful neglect, pay, upon notice and demand by the state tax commission and in the same manner as the payment of the tax,” following “time for filing) shall,” and added subdivisions (e)(2) through (4), and in subsection (f) substituted “subsection (a), (b), (c), (d) or (e) of this section” for “subsections (a), (b), (c), (d) or (e) hereof”.

Federal References. — Section 6661 of the Internal Revenue Code, referred to in paragraph (d)(6), is codified as 26 U.S.C. § 6661.

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of Acts 1981, ch. 176 declared an emergency. Approved March 31, 1981.

Section 9 of S.L. 2001, ch. 270 provided that § 8 of the act should take effect on and after March 31, 2001.

JUDICIAL DECISIONS

Penalty Not Warranted.

Where paging service sought opinion of office of tax collector and was directed to tax commission employee and received an opinion indicating that no tax was owed on paging unit provided to customers, and the office of tax collector and its successor, the tax com-

mission, followed the practice of not taxing the lease of pagers from 1965 until 1993 when it adopted regulations addressing this type of transaction, these regulations could not change the meaning of the legislation which has not changed since 1965; therefore, paging service was not negligent to continue to rely

on advice received in 1965 which was in fact the policy of the tax commission for some 18 years following and penalties imposed by the tax commission pursuant to § 63-3406(a) should have been waived. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

Since imposition of the nonfiler penalty is discretionary and is not conditioned on any degree of culpability of the taxpayer, it was an

abuse of discretion to punish a taxpayer for relying on the written opinion of an employee of the office of tax collector setting forth the position of the taxing authority which in fact was followed for nearly two decades, taking into account that the applicable statute had never been amended. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

63-3046A. Interest on underpayment of estimated tax. — (a) In the event that a person required to pay estimated taxes under section 63-3036A, Idaho Code, fails to pay such estimated taxes or fails to pay the full amount of estimated taxes due, the state tax commission shall assess interest on such unpaid or underpaid estimated taxes at the rate of interest set in section 63-3045, Idaho Code, as the interest to be assessed on a deficiency in taxes.

(b) Interest shall be computed on the difference between the amount of estimated payment required to be made on each quarterly report and the amount of quarterly payment actually made. Interest shall apply from the due date of the quarterly report until the required amount is paid, or until, excluding extensions, the due date of the return, whichever is first. [I.C., § 63-3046A, as added by 1987, ch. 342, § 5, p. 725.]

STATUTORY NOTES

Effective Dates. — Section 7 of S.L. 1987, ch. 342 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1987."

"(2) Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1987, and tax payments due in September, 1987, under applicable federal law, shall correspondingly be due in September, 1987, under the provisions of this act." Approved April 6, 1987.

63-3046B. Failure to file partnership return. — (a) Penalty. In addition to the penalty imposed by section 63-3075, Idaho Code, if any partnership required to file a return under section 63-3030, Idaho Code, for any taxable year:

(1) Fails to file such return at the time prescribed therefor by section 63-3030, Idaho Code, (determined with regard to any extension of time for filing); or

(2) Files a return which fails to show the information required under section 63-3030, Idaho Code, such partnership shall be liable for a penalty determined under subsection (b) of this section for each month (or fraction thereof) during which such failure continues (but not to exceed five (5) months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month. For purposes of subsection (a) of this section, the amount determined under this subsection for any month is the product of:

(1) Ten dollars (\$10.00), multiplied by

(2) the number of persons who are partners in the partnership during any part of the taxable year, except that in the case of partnerships with no business activity in Idaho during the taxable year but with partners who

are Idaho residents, multiply the amount in subsection (b)(1) of this section by the number of partners who are either Idaho residents or are persons other than individuals who are transacting business in Idaho.

(c) Assessment of penalty. The penalty imposed in subsection (a) of this section shall be assessed against the partnership. [I.C., § 63-3046B, as added by 1989, ch. 182, § 1, p. 457; am. 1994, ch. 39, § 5, p. 57; am. 1995, ch. 111, § 33, p. 347.]

STATUTORY NOTES

Effective Dates. — Section 6 of S.L. 1994, ch. 39, declared an emergency and provided that this act shall be in full force and effect on

and after February 25, 1994, and retroactively to January 1, 1994. Approved February 25, 1994.

63-3047. Compromised cases. — The state tax commission or its delegate may compromise any penalty arising under the provisions of this act instead of commencing suit thereon and may compromise any such case with the consent of the attorney general after suit thereon has been commenced. Where any penalty case is compromised the state tax commission shall keep on file in its office reasons for the settlement of any case by compromise. [1959, ch. 299, § 47, p. 613.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see compiler's notes, § 63-3001.

The office of state tax collector has been abolished and the powers and duties trans-

ferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 853-855.

63-3048. Adjusted or compromised cases — Closing agreements. — (a) The state tax commission or its delegate is authorized to enter into an agreement in writing with any person relating to the liability of such person, or of the person for whom he is acting, in respect of any tax under this act for any taxable period ending prior to the date of the agreement.

(b) Such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of the state.

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. [1959, ch. 299, § 48, p. 613.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see compiler's notes, § 63-3001.

The office of state tax collector has been

abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state

tax commission on the authority of S.L. 1967, ch. 125, § 7.

JUDICIAL DECISIONS

Cited in: Flint v. United States, 237 F. Supp. 551 (D. Idaho 1964).

63-3049. Judicial review. — (a) Redetermination by the state tax commission may be reviewed in the district court for Ada county or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer against the state tax commission within ninety-one (91) days after the receipt of notice of the decision of the state tax commission denying, in whole or in part, any protest of the taxpayer or, within the same period, by filing an appeal with the board of tax appeals. Upon the serving of summons upon the state tax commission the case shall proceed as other civil cases but may be heard by the judge in chambers. If the case is appealed to the board of tax appeals, the hearing before that body shall proceed as set forth in the act creating such board. If the court finds that any tax is due, it shall enter judgment for such tax, including any interest or penalties that may also be due and owing, against the taxpayer. Any taxes, penalties or interest paid, found by the court to be in excess of that which can be legally assessed, shall be ordered refunded to the taxpayer with interest from the time of payment. In the case of sales or use tax and corporate income tax decisions by the state tax commission, when the amount asserted exceeds twenty-five thousand dollars (\$25,000), no appeal to the board of tax appeals shall be allowed.

(b) Before a taxpayer may seek review by the district court or the board of tax appeals, the taxpayer shall secure the payment of the tax or deficiency as assessed by depositing cash with the tax commission in an amount equal to twenty percent (20%) of the amount asserted. In lieu of the cash deposit, the taxpayer may deposit any other type of security acceptable to the tax commission.

No act, order or proceeding of the tax commission shall be valid until after the time allowed for taking such court action has expired or such court action is finally determined. As used in this section, the term "amount asserted" shall mean the total amount due, as set forth in the decision of the state tax commission.

(c) Any party to the proceedings may appeal to the supreme court from the judgment of the district court under the rules and regulations prescribed for appeals. If the appeal be taken by the state tax commission, it shall not be required to give any undertaking or to make any deposits to secure the cost of such appeal or to secure the payment of any amounts ordered refunded by the court.

(d) Whenever it appears to the court that:

- (1) Proceedings before it have been instituted or maintained by a party primarily for delay; or
- (2) A party's position in such proceeding is frivolous or groundless; or
- (3) A party unreasonably failed to pursue available administrative remedies;

the court, in its discretion, may require the party which did not prevail to pay to the prevailing party costs, expenses and attorney's fees. [1959, ch. 299, § 49, p. 613; am. 1965, ch. 316, § 10, p. 880; am. 1967, ch. 294, § 9, p. 828; am. 1969, ch. 453, § 16, p. 1195; am. 1983, ch. 229, § 1, p. 630; am. 1993, ch. 94, § 5, p. 224; am. 2005, ch. 17, § 1, p. 47.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

JUDICIAL DECISIONS

ANALYSIS

Amount in dispute.

— Defined.

— Harmless error.

— Modified deficiency determination.

Application of jurisdictional amendment.

Attorneys fees.

Bond.

Construction with other laws.

Deposit required.

Failure to request review.

Independent action.

No jurisdiction to extend time for appeal.

Notice.

Rational basis test.

Amount in Dispute.

— Defined.

The phrase "amount in dispute," as used in this section, includes tax, interest and penalty; the sum total of these amounts represents the amount in dispute. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

— Harmless Error.

Although the district court held the amount in dispute included only tax and interest, this holding amounted to harmless error since the total of these two amounts still exceeded the \$25,000 jurisdictional limit. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

— Modified Deficiency Determination.

For purposes of reviewing the monetary jurisdictional limit contained in this section, where an original notice of deficiency determination was modified by the state tax commission, where the tax commission demanded payment of the modified deficiency determination to the board of tax appeals, the modified deficiency determination, rather than the original notice of deficiency, was the amount

in dispute. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Application of Jurisdictional Amendment.

Although the original notice of deficiency was issued in 1981, the district court's application of the 1983 jurisdictional amendment to this section did not constitute retroactive application of the statute where taxpayer's right to appeal did not arise until 1987 when the state tax commission issued its final decision on taxpayer's motion for redetermination. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Attorneys Fees.

A taxpayer's appeal to the district court is a civil action, and hence within the purview of § 12-121. *Bogner v. State Dep't of Revenue & Taxation*, 107 Idaho 854, 693 P.2d 1056 (1984).

Where the appeal involved the perfection of an appeal on two issues, a capital gains issue and a like-kind exchange issue, because both parties prevailed in part in the appeal, neither party was entitled to an award of costs or attorney fees. *Ambrose v. Idaho State Tax*

Comm'n, 139 Idaho 741, 86 P.3d 455 (2004).

Bond.

The trial court did not abuse its discretion in refusing to waive the surety bond requirement absent a showing that the taxpayers were not indigent. *Tarbox v. Tax Comm'n*, 107 Idaho 957, 695 P.2d 342 (1984).

Construction With Other Laws.

This section and § 63-3632 relate to the same subject matter, review of a determination by the state tax commission, and are therefore in *pari materia*. Construing these statutes together, it was clearly the intent of the legislature to limit an appeal to the board of tax appeals from a sales and use tax determination by the tax commission to those instances where the amount in controversy is \$25,000 or less. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Where an irreconcilable inconsistency exists between statutes in *pari materia*, the latest expression of the legislature will control. Since § 63-3632 had not been amended since 1981 (as of 1993), the latest expression of the legislature was the 1983 amendment imposing a jurisdictional limitation on the board of tax appeals in this section. This limitation controlled § 63-3632 to the extent § 63-3632 was read to allow the appeal of any amount in controversy to the board of tax appeals. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Taxpayer argued that a portion of the \$42,684 payment (regarding taxes assessed on a sale of a partnership) should also have been applied to the 20 percent deposit required to challenge the redetermination that she owed additional taxes because of the commission's disallowance of the like-kind exchange; however, neither in the taxpayer's letter, nor at any later time did the taxpayer direct that any portion of the \$42,684 payment could be applied to the deposit required to appeal that issue, § 63-4007 required the commission to apply the payment as directed, and it could not apply a portion of that payment to some other tax obligation, nor could it apply it to the 20 percent deposit required to appeal the redetermination regarding the like-kind exchange as required by § 63-3049(b). *Ambrose v. Idaho State Tax Comm'n*, 139 Idaho 741, 86 P.3d 455 (2004).

Deposit Required.

Timely payment of a 20% deposit is a jurisdictional requirement for the hearing of an appeal from a tax commission decision. *AG Air, Inc. v. State Tax Comm'n*, 132 Idaho 345, 972 P.2d 313 (1999).

Failure to Request Review.

Administrative garnishments to collect tax deficiencies do not violate a taxpayer's right

to due process if the taxpayer has been provided notice and a reasonable opportunity to be heard concerning the assessed deficiency; where the defendant instituted the action to enjoin the state tax commission from collecting an income tax deficiency assessed against him nearly nine months after the expiration of his right to judicial review, the defendant was afforded due process, but failed to timely exercise his right to seek judicial review. *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

Where no "review" was either requested by the defendant or granted by the state tax commission and the record showed that the commission entered a final decision approving the deficiency determination, the commission was not estopped from asserting that the defendant's action to enjoin the commission from garnishing his wages instituted nine months later was untimely. *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

Where a trucking company trust failed to request within 91 days a review of tax liability determinations by the state tax commission, it was barred from collaterally attacking those determinations in later proceedings in which it was contesting an order authorizing the commission to sell vehicles titled to the trust to pay those tax liabilities. *State Tax Comm'n v. I R Trucking Trust, — Idaho —*, 156 P.3d 521 (2007).

Independent Action.

After the tax commission determined a tax deficiency, defendant could have filed an action in the district court or could have taken an administrative appeal, and where he did not avail himself of either right, he cannot now collaterally attack the tax deficiency determination in an independent action. *Conley v. Looney*, 117 Idaho 627, 790 P.2d 920 (Ct. App. 1989).

No Jurisdiction to Extend Time for Appeal.

Section 63-3632(a) allows a taxpayer either to file an appeal with the board of tax appeals or to file a complaint with the district court, in accordance with this section, for a review of the state tax commission's redetermination; the record was clear that taxpayer opted to file an appeal with the Board within the time permitted, rather than filing a complaint with the district court; in granting taxpayer's motion for reconsideration, the district court attempted to treat taxpayer's appeal to the Board as the filing of a complaint with the district court; in effect, the district court extended the time within which taxpayer might file a complaint with the district court for a review of the Commission's redetermination; the district court did not have jurisdiction to do so. *Grand Canyon Dories, Inc. v. Idaho*

State Tax Comm'n, 121 Idaho 515, 826 P.2d 476 (1992) (decision prior to 1993 amendment of § 63-3632).

Because a district court's jurisdiction is limited by the requirements of this section, a district court did not have the power to extend the time within which the plaintiff could make the required deposit. *AG Air, Inc. v. State Tax Comm'n*, 132 Idaho 345, 972 P.2d 313 (1999).

Notice.

Receipt of notice of a deficiency judgment by a taxpayer's attorney did not waive the taxpayer's right to receive personal notice, nor did it constitute the required notice for purposes of calculating the time allowed to file a complaint. *Halley v. Idaho State Tax Comm'n*, 116 Idaho 761, 779 P.2d 436 (Ct. App. 1989).

Rational Basis Test.

The rational basis test is the appropriate standard of review of classifications made for

tax purposes. In establishing the surety bond alternative under subsection (b) of this section, the legislature enacted a statute rationally related to the governmental objective of ensuring the efficient collection of taxes. *Tarbox v. Tax Comm'n*, 107 Idaho 957, 695 P.2d 342 (1984).

Cited in: *Herndon v. West*, 87 Idaho 335, 393 P.2d 35 (1964); *Leonard Constr. Co. v. State ex rel. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975); *Bills v. State Dep't of Revenue & Taxation*, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986); *Crane Creek Country Club v. Idaho State Tax Comm'n*, 117 Idaho 585, 790 P.2d 366 (1990); *Hamilton v. Tax Commission*, 119 Idaho 552, 808 P.2d 1297 (1991); *Pratt v. State Tax Comm'n*, 128 Idaho 883, 920 P.2d 400 (1996); *AIA Servs. Corp. v. Idaho State Tax Comm'n*, 136 Idaho 184, 30 P.3d 962 (2001); *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 134 P.3d 641 (2006).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Appeal.

Costs of appeal.

Declaratory judgment action.

Duress in collection of tax.

Necessity for protest.

Payment not obviating protest payment.

Suit by taxpayer.

Appeal.

Any party to the proceedings in the district court could appeal to the Supreme Court from the judgment of the district court. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

Costs of Appeal.

Under the provisions of the statute, costs were taxable against the state by necessary implication. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

The statute expressly provided that when an appeal was taken by the tax collector he should not be required to give an undertaking for costs. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

Declaratory Judgment Action.

Where a taxpayer seeking to recover state income taxes had complied with the statute relating to a review of the action of the commissioner, the fact that the action was brought under the Declaratory Judgment Statute rather than as a suit to determine by review the action of the commissioner did not impose an additional burden upon the commissioner; relief would not be denied on the

ground that the taxpayer's suit should have been one to review the action of the commissioner in refusing the refund. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Duress in Collection of Tax.

That state income tax was required to be paid or security given for its payment as a prerequisite to its recovery was not such "duress" as to obviate necessity of payment under protest to authorize recovery. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Necessity for Protest.

Where neither state income tax statute, which had been patterned very largely upon the federal statute authorizing recovery of taxes not paid under protest, nor any amendment mentioned whether recovery of taxes depended upon their having been paid under protest, and the Supreme Court held, at the time the state tax law was passed, that other taxes could not be recovered unless there had been a protest at the time of their payment, the legislature intended that income taxes should not be refunded unless they had been paid under protest. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

Payment Not Obviating Protest Payment.

Where a taxpayer had paid the state income tax for 1939 without protest, he was not entitled to recover such payment, notwithstanding that he had paid the tax or given security for its payment before the institution of a suit for its recovery. *Walker v. Wedgwood*,

64 Idaho 285, 130 P.2d 856 (1942).

Suit by Taxpayer.

The statute authorized the taxpayer to sue the tax collector for the recovery of taxes erroneously or illegally collected. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 603-605.

63-3050. Action to collect unpaid tax or deficiency. — Any tax owed the state tax commission, any interest, penalty, additional amount, or addition to such tax, and any tax or any interest, penalty, additional amount, or addition to such tax which has been erroneously refunded and any deficiency shall constitute a debt to the state of Idaho and may be collected by lien foreclosure or sued for and recovered in any proper form of action, in the name of the state of Idaho, in any court having jurisdiction over the taxpayer or property owned by or in which the taxpayer has an interest. The remedy herein shall be in addition to any and all other existing remedies. [1959, ch. 299, § 50, p. 613; am. 1996, ch. 42, § 1, p. 113.]

STATUTORY NOTES

Compiler's Notes. — Section 2 of S.L. 1996, ch. 42 is compiled as § 63-3065A.

JUDICIAL DECISIONS

Cited in: *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572,* 716 P.2d 1344 (Ct. App. 1986).

63-3051. Property subject to lien. — If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount of such tax, including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state of Idaho upon all property and rights to property, whether real or personal, belonging to such person or acquired afterwards and before the lien expires. Such lien shall not be valid as against any mortgagee or other lienholder, pledgee, secured party, purchaser, or judgment lienor until notice thereof has been filed in the office of the secretary of state in the form and manner provided in chapter 19, title 45, Idaho Code. [1959, ch. 299, § 51, p. 613; am. 1987, ch. 86, § 2, p. 161; am. 1994, ch. 42, § 1, p. 70; am. 1997, ch. 205, § 4, p. 607.]

STATUTORY NOTES

Effective Dates. — Section 10 of S.L. 2005 read: "Notwithstanding the effective dates specified in section 1 through 9 of this act, nothing in this act shall take effect unless the

secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to provide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the

First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void." The Secretary of State has so certified to the Idaho Code Commission and thus the Chapter 205 became effective as prescribed therein.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 891-897.

63-3052. Income tax lien. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1959, ch. 299, § 52, p. 613, was repealed by S.L. 1987, ch. 86, § 3.

63-3053. Filing and indexing liens. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section which comprised S.L. 1959, ch. 299, § 531, p. 613, was repealed effective July 1, 1998 by S.L. 1997, ch. 205, § 5. For present law regarding state liens see §§ 45-1901 — 45-1910.

Section 10 of S.L. 205 read: "Notwithstanding the effective dates specified in section 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to pro-

vide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void." The secretary of state has so certified to the Idaho code commission and thus the Chapter 205 became effective as prescribed therein.

63-3054. Discharge of lien. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section which comprised S.L. 1959, ch. 299, § 54, p. 613, was repealed effective July 1, 1998 by S.L. 1997, ch. 205, § 5. For new law regarding state liens see §§ 45-1901 — 45-1910.

Section 10 of S.L. 205 read: "Notwithstanding the effective dates specified in section 1 through 9 of this act, nothing in this act shall take effect unless the secretary of state shall certify to the Idaho Code Commission that he has received a sufficient appropriation to pro-

vide for the development of the technology required to implement the provisions of this act. If the certification is not made by the twenty-first day after the adjournment sine die of the First Regular Session of the Fifty-fourth Idaho Legislature, this act shall be null and void." The secretary of state has so certified to the Idaho code commission and thus the Chapter 205 became effective as prescribed therein.

63-3055. Release or subordination of income tax lien. — (1) The state tax commission may at any time release all or any portion of the property subject to the lien from the lien, or it may subordinate the lien to other liens if it determines:

- (a) That the taxes, penalties or interests are sufficiently secured by a lien on other property of the taxpayer; or
- (b) That the release or subordination of the lien will not endanger or jeopardize the collection of such taxes, penalties or interest; or
- (c) That a surety bond or securities satisfactory to secure deposits of public funds have been posted, deposited or pledged with the state tax commission in an amount sufficient to secure the payment of such taxes, penalties, or interest; or
- (d) All or a part of such taxes, penalties or interest have been paid.

A certificate by the state tax commission to the effect that any property has been released from the lien herein provided for, or that such lien has been subordinated to other liens, shall be conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

(2) If the tax commission determines that the filing of the notice of any lien was erroneous, the tax commission shall expeditiously, and, to the extent practicable, within fourteen (14) days after such determination, issue a certificate of release of such lien and shall include in such certificate a statement that such filing was erroneous. A lien is not an erroneous lien if it is accurate at the time the lien is filed.

(3) Where an officer or employee of the tax commission knowingly or negligently fails to release a notice of lien, a taxpayer may bring an action against the tax commission pursuant to section 63-3074, Idaho Code, in district court seeking direct economic damages and costs. A taxpayer must first notify the tax commission that a release was not issued timely. [1959, ch. 299, § 55, p. 613; am. 1993, ch. 94, § 6, p. 224; am. 1994, ch. 172, § 4, p. 387.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax

commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

63-3056. Action to enforce lien. — In any case where there has been a refusal or neglect to pay any tax, including interest, penalty, additional amount or addition to such tax, together with any costs that may accrue in addition thereto, the attorney general of the state, at the request of the state tax commission, may file an action in the district court for Idaho in the county where the property encumbered by the lien is located to enforce the lien of the state for such tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax. Such action shall be commenced and pursued in like manner as is now provided by law for the foreclosure of mortgages and other liens in chapter 1, title 6, Idaho Code, which is hereby made applicable to the tax liens arising under this chapter to the extent that such provisions are not inconsistent with other provisions of this chapter, provided, however, that the redemption period may be fixed by the judge of

the court wherein the proceeding was filed, but in no event shall the period of redemption exceed the time prescribed by sections 11-402 and 11-403, Idaho Code. Such action may be commenced at any time within five (5) years following the date such lien was filed, or was last extended. [1959, ch. 299, § 56, p. 613; am. 1969, ch. 319, § 16, p. 982; am. 2004, ch. 28, § 3, p. 45.]

JUDICIAL DECISIONS

Cited in: *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P2d 1344 (Ct. App. 1986).

63-3057. Distraint on personal property. — (1) In addition to all other remedies or actions provided by this act, it shall be lawful for the tax commission, or any of its agents or deputies, to collect any taxes (the word “taxes,” as used in this section including any deficiencies in respect of such taxes) with such interest, penalties, and other additional amounts as are permitted by law, by distraint and sale, in the manner provided herein, of the property of any person liable to pay any taxes, interest, penalties, or other additional amounts, who neglects or refuses to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof, and who has not appealed from the assessment of such taxes, interest, penalties and other additional amounts pursuant to the provisions of the act or who has not satisfied or discharged any lien filed under this act. The term “property” as used herein shall be construed to mean personal property, both tangible and intangible, any right, title, and interest to such personal property and shall include, without limitation, stocks, securities, bank accounts, and evidences of debt.

(2) In conjunction with the remedy provided in subsection (1) of this section, the state tax commission may file an action in the district court where a taxpayer resides or has his principal place of business or in which the property subject to distraint under this section is located for a writ of possession under chapter 3, title 8, Idaho Code. In such an action, the sheriff shall designate the state tax commission as the keeper of the property under section 8-305, Idaho Code, and after expiration of the five (5) day period provided in section 8-308, Idaho Code, shall relinquish all custody and responsibility for such property to the state tax commission. The state tax commission may proceed in regard to such property as provided for property seized under a warrant issued by the commission under this chapter. [1959, ch. 299, § 57, p. 613; am. 1975, ch. 86, § 1, p. 178; am. 2003, ch. 81, § 1, p. 256.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted. For words “this act” see Compiler's Notes, § 63-3001.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § § 866-868.

63-3058. Exempt property. — Property exempt from distraint shall be the same property as is exempt from execution under the provisions of chapter 6, title 11, Idaho Code. [1959, ch. 299, § 58, p. 613; am. 1982, ch. 2, § 1, p. 5.]

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 905.

63-3059. Levy or distraint warrant. — (1) In case of neglect or refusal to pay taxes or deficiencies as hereinabove provided, the state tax commission may levy, or, by warrant issued under its own hand, authorize its agents or employees or a sheriff or deputy, to levy upon, seize and sell all property, except such as is exempt by the preceding section, belonging to such person, for the payment of the amount due or for the enforcement of any lien authorized and filed pursuant to this chapter.

(2) Any person in possession of, or obligated with respect to, property or rights to property subject to levy upon which a levy has been made who, upon demand by the state tax commission or by a sheriff or deputy, surrenders such property or rights to property, or discharges such obligation, to the state tax commission shall be discharged from any obligation or liability to the delinquent taxpayer and any other person with respect to such property or rights to property arising from such surrender or payment.

(3) Any person who fails or refuses to surrender any property or rights to property, subject to levy, shall be liable to the state of Idaho in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made, together with costs and interest on such sum at the rate established under section 63-3045, Idaho Code, from the date of such levy.

(4) Any amount, other than costs, recovered under this section shall be credited against the tax liability for the collection of which such levy was made. [1959, ch. 299, § 59, p. 613; am. 1961, ch. 328, § 20, p. 622; am. 2000, ch. 149, § 1, p. 385.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector was abolished and its powers and duties were transferred to the state tax commission (§ 63-3402a). Therefore on authority of § 63-506(c) which provides that certain employees of the state tax commission designated by the commission as deputies shall

perform the duties performed by the deputy tax collectors, the name "deputy" has been substituted for "deputy collector" in this section.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 704, 705.

63-3060. Proceedings on levy or distraint. — When a warrant is issued by the state tax commission for the collection of any tax, interest, penalty, additional amount or addition to such tax, imposed by this chapter or for the enforcement of any lien authorized by this chapter, it shall be directed to any sheriff or agent of the state tax commission, and any such warrant shall have the same force and effect as a writ of execution. It may and shall be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The sheriff or agent of the state tax commission, shall receive upon the completion of his services pursuant to said warrant, and the state tax commission is authorized to pay to said sheriff or agent of the state tax commission, the same fees, commissions and expenses pursuant to said warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publication in a newspaper shall be subject to approval by the state tax commission rather than by the court; said fees, commissions and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant issued by the state tax commission shall show the name and last known address of the taxpayer liable for the amount, and shall show the year for which such tax, interest, penalty, additional amount, or addition to such tax, is due and the amount thereof, and the fact that the state tax commission has complied with all provisions of this chapter in the determination of the amount required to be paid, and that the tax, interest, penalty, additional amount, or addition to such tax, is due and payable according to law. [1959, ch. 299, § 60, p. 613; am. 1961, ch. 328, § 21, p. 622; am. 2004, ch. 28, § 4, p. 45.]

STATUTORY NOTES

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

JUDICIAL DECISIONS

Garnishments.

Administrative garnishments to collect tax deficiencies do not violate a taxpayer's right to due process if the taxpayer has been provided notice and a reasonable opportunity to be heard concerning the assessed deficiency; where the defendant instituted the action to enjoin the state tax commission from collecting an income tax deficiency assessed against him nearly nine months after the expiration of his right to judicial review, the defendant was afforded due process, but failed to timely exercise his right to seek judicial review.

Parsons v. Idaho State Tax Comm'n, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

This section allows the commission to issue a warrant for the collection of taxes, including interest and penalties, directed to any sheriff, constable or deputy, which warrant shall have the same force and effect as a writ of execution; the grant of authority by the legislature to the tax commission to use the garnishment process falls within the power of the legislature. *Bills v. State, Dep't of Revenue & Taxation*, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 704-719.

63-3061. Successive seizures. — Whenever any property which is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or agent of the state tax commission, may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists, until the amount due from such taxpayer, together with all expenses, is fully paid. [1959, ch. 299, § 61, p. 613; am. 1961, ch. 328, § 22, p. 622; am. 2004, ch. 28, § 5, p. 45.]

STATUTORY NOTES

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

63-3061A. Notice of levy and distraint. — (1) The state tax commission shall, at the time of levy, provide to the taxpayer and to any person in possession of the property subject to distraint, written notice of levy and distraint. The written notice of levy and distraint may be:

- (a) Given in person;
- (b) Left at the dwelling place or usual place of business of such person; or
- (c) Sent by certified mail to such person's last known address.

(2) Service may be made by other means, including electronic means as provided in chapter 50, title 28, Idaho Code, the uniform electronic transactions act, when agreed upon by the state tax commission and the party served. [I.C., § 63-3061A, as added by 2005, ch. 22, § 1, p. 60.]

63-3062. Production of books. — All persons, and officers of companies or corporations, are required on demand of a sheriff or agent of the state tax commission, about to distraint, or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint, or the property or rights of property liable to distraint for the tax due. [1959, ch. 299, § 62, p. 613; am. 1961, ch. 328, § 23, p. 622; am. 2004, ch. 28, § 6, p. 45.]

STATUTORY NOTES

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 729.

63-3063. Collection by distraint not exclusive. — The distraint provisions of this act shall not be deemed exclusive but shall be in addition to any and all other existing remedies provided by law for the enforcement of the revenue laws of the state of Idaho. [1959, ch. 299, § 63, p. 613.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3001.

63-3064. Other remedies preserved. — (a) Nothing in the act shall be construed so as to prohibit the commencing of any action at law by the state tax commission to collect any tax, interest, penalty, additional amount, or addition to such tax, due under the provisions of this act, whenever in the opinion of the state tax commission or the attorney general the commencement of such action is a more appropriate method of collecting such tax, interest, penalty, additional amount, or addition to such tax.

(b) The state tax commission is authorized to apply for and the court to grant a temporary or permanent injunction enjoining any person from violating or continuing to violate any of the provisions of this act or regulations promulgated under this act notwithstanding the existence of other remedies at law. [1959, ch. 299, § 64, p. 613; am. 1987, ch. 86, § 4, p. 161.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3001.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Costs taxable against state.
Suit by tax collector.

Costs Taxable Against State.

Under the provisions of former statute, costs were taxable against the state by necessary implication. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

Suit by Tax Collector.

Former statute authorized the tax collector to sue for the collection of taxes. *Snake River Mut. Fire Ins. Co. v. Neill*, 80 Idaho 534, 336 P.2d 107 (1959).

63-3065. Jeopardy assessments. — (a) If the tax commission finds that a taxpayer is about to depart from the state of Idaho or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the taxable year then last past or the taxable year then current unless such proceedings be brought without delay, the tax commission shall declare the taxable period for such taxpayer immediately terminated and shall cause notice of such findings and declaration to be given the taxpayer, together with a demand for immediate payment of the tax for the taxable period so declared terminated and of the tax for the preceding taxable year or so much of said taxes as is unpaid, whether or not the time otherwise allowed by law for filing returns and paying the tax has expired; and such taxes shall thereupon become immediately due and payable. The provisions of section 63-4003(1)(a), Idaho

Code, shall not apply to a notice under this section and communications related thereto. In any proceedings in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section the finding of the tax commission, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design.

(b) Collection procedures may be instituted immediately; however, any taxpayer deeming himself aggrieved by any act of the tax commission pursuant to the provisions of this section may, within sixty-three (63) days of receipt of said notice, petition the tax commission for a redetermination or commence action for refund or redetermination upon payment of the tax together with interest and penalty or upon filing a bond in the amount of the assessment.

(c) A taxpayer who is not in default in making any return or paying any taxes assessed under this chapter may furnish to the state of Idaho under regulations to be prescribed by the tax commission, security approved by the tax commission that he will duly make the return next thereafter required to be filed and pay the tax next thereafter required to be paid. The tax commission may approve and accept in like manner security for return and payment of taxes made due and payable by virtue of the provisions of this section.

(d) If security is approved and accepted pursuant to the provisions of this section and such further or other security with respect to the tax or taxes covered thereby is given as the tax commission shall from time to time find necessary and require, payment of such taxes shall not be enforced by any proceedings under the provisions of this section prior to the expiration of the time otherwise allowed for paying such respective taxes.

(e) In the case of a bona fide resident of the state of Idaho about to depart from the state of Idaho the tax commission may, at its discretion, waive any or all of the requirements placed upon the taxpayer by this section.

(f) If a taxpayer violates or attempts to violate this section there shall, in addition to all other penalties, be added as part of the tax twenty-five percent (25%) of the total amount of the tax or deficiency in the tax. [1959, ch. 299, § 65, p. 613; am. 1961, ch 328, § 24, p. 622; am. 1967, ch. 294, § 10, p. 828; am. 1975, ch. 86, § 2, p. 178; am. 1987, ch. 86, § 5, p. 161; am. 1993, ch. 94, § 7, p. 224; am. 1994, ch. 172, § 5, p. 387; am. 2005, ch. 30, § 2, p. 141.]

STATUTORY NOTES

Compiler's Notes. — Section 12 of S.L. 1967, ch. 294 read: "In the event the office of the tax collector is merged with the state tax commission, determinations, jeopardy determinations, redeterminations, compromises, closing agreements and similar responsibilities required to be performed by the tax collector under the Idaho Income Tax Act and the Idaho Sales Tax Act shall be performed by

the member of the state tax commission assigned the duty of supervisor of the division of taxation involved." The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission. See § 63-3402a.

Effective Dates. — The 1961 amendment became effective retroactively to cover taxable years beginning January 1, 1961.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 665.

63-3065A. Jurisdiction over nonresidents. — A deficiency assessed and due and payable by a person not within the state may be prosecuted against such person by an action in any court having jurisdiction of the subject matter or in personam jurisdiction of such person in any action for taxes, penalty and interest owed the state tax commission. Notice shall be given and the action shall proceed in accordance with the applicable rules and statutes regulating civil procedure. In the event such notice shall be by publication, notice shall also be mailed by certified mail to such person at his last known address. [I.C., § 63-3065A, as added by 1961, ch. 328, § 25, p. 622; am. 1996, ch. 42, § 2, p. 113.]

STATUTORY NOTES

Effective Dates. — The 1961 law adding this section became effective retroactively to cover taxable years beginning January 1, 1961.

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 814.

63-3066. Legal adviser. — The attorney general of the state shall be the legal counselor and adviser of the tax commission. [1959, ch. 299, § 66, p. 613; am. 1974, ch. 19, § 9, p. 524.]

STATUTORY NOTES

Effective Dates. — Section 12 of S.L. 1974, ch. 19 provided that the act should take effect on and after July 1, 1974.

63-3067. Revenue received — State refund account. — (1) A sum equal to the amount withheld under section 63-3035A, Idaho Code, shall be distributed fifty percent (50%) to the public school income fund to be utilized to facilitate and provide substance abuse programs in the public school system, and fifty percent (50%) shall be distributed to the counties to be utilized for county juvenile probation services. These funds shall be distributed quarterly to the counties based upon the percentage the population of the county bears to the population of the state as a whole.

(2) All moneys except as provided in subsection (1) of this section, and except as hereinafter provided, received by the state of Idaho under this act shall be deposited by the state tax commission, as received by it, with the state treasurer and shall be placed in and become a part of the general account under the custody of the state treasurer. Providing however,

(a) that an amount equal to twenty percent (20%) of the amount deposited with the state treasurer shall be placed in the "state refund account"

which is hereby created for the purpose of repaying overpayments, for the purpose of remitting to counties and taxing districts for personal property exempt from taxation pursuant to section 63-602EE, Idaho Code, as provided in subsection (3) of this section, for the purpose of depositing in the trust accounts specified in section 63-3067A, Idaho Code, such amounts as may be designated by individuals for the purpose of depositing in the Idaho ag in the classroom account an amount as may be designated by the individual receiving a refund for such overpayment, and for the purpose of paying any other erroneous receipts illegally assessed or collected, penalties collected without authority and taxes and licenses unjustly assessed, collected or which are excessive in amount. Whenever necessary for the purpose of making prompt payment of refunds, the board of examiners, upon request from the state tax commission, and after review, may authorize the state tax commission to transfer any additional specific amount from income tax collections to the "state refund account." There is appropriated out of the state refund account so much thereof as may be necessary for the payment of the refunds herein provided. Claims for, and payment of refunds under the provisions of this section shall be made in the same manner as other claims against the state of Idaho;

(b) an amount equal to any amount required to be rebated under section 63-2909, Idaho Code, is continuously appropriated for the purpose of paying any such rebate.

(3) Any unencumbered balance remaining in the state refund account on June 30 of each and every year in excess of the sum of one million five hundred thousand dollars (\$1,500,000) shall be transferred to the general fund and the state controller is hereby authorized and directed on such dates to make such transfers unless the board of examiners, which is hereby authorized to do so, changes the date of transfer or sum to be transferred. [1959, ch. 299, § 67, p. 613; am. 1965, ch. 316, § 11, p. 880; am. 1966 (2nd E.S.), ch. 7, § 1, p. 19; am. 1974, ch. 122, § 1, p. 1297; am. 1981, ch. 38, § 1, p. 58; am. 1981, ch. 97, § 1, p. 139; am. 1983, ch. 156, § 1, p. 433; am. 1985, ch. 31, § 3, p. 59; am. 1986, ch. 73, § 13, p. 201; am. 1987, ch. 6, § 1, p. 6; am. 1987, ch. 260, § 5, p. 545; am. 1987, ch. 337, § 1, p. 709; am. 1994, ch. 180, § 156, p. 420; am. 1998, ch. 62, § 1, p. 219; am. 1999, ch. 371, § 1, p. 1015; am. 2001, ch. 356, § 2, p. 1250; am. 2002, ch. 151, § 1, p. 441; am. 2004, ch. 104, § 1, p. 369; am. 2005, ch. 369, § 2, p. 1169.]

STATUTORY NOTES

Cross References. — Claims against the state, procedure, § 67-1023.

Compiler's Notes. — For words "this act," as referenced in the first paragraph, see Compiler's Notes, § 63-3001.

Section 3 of S.L. 2005, ch. 369 provided "SEVERABILITY. The provisions of this are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of the remaining portions of this act."

Effective Dates. — Section 12 of S.L. 1965, ch. 316 read: "Effective date. An emergency existing therefore, which emergency is hereby declared to exist, this act shall be in full force and effect immediately upon its passage and approval and retroactively to January 1, 1965, the provisions of section 3 amending section 63-3022(k), Idaho Code, and the provisions of section 4 amending

section 63-3028 (now repealed), Idaho Code, shall be in force and effect retroactively to December 31, 1963, and withholding tax under new schedules produced by this amendatory act shall go into force and effect on July 1, 1965."

Section 2 of 1966 (2nd E. S.), ch. 7 declared an emergency. Approved March 10, 1966.

Section 2 of S.L. 1998, ch. 62 declared an emergency and provided this act shall be in full force and effect on and after June 30, 1998. Approved March 18, 1998.

Section 2 of S.L. 1974, ch. 122 provided that the act should take effect on and after July 1, 1974.

Section 3 of S.L. 1981, ch. 38 provided that the act should take effect on and after January 1, 1982.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Con-

stitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 156 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 3 of S.L. 2001, ch. 356 declared an emergency retroactively to January 1, 2001 and approved April 9, 2001.

Section 2 of S. L. 2002, ch. 151 declared an emergency retroactively to January 1, 2002. Approved March 20, 2002.

Section 4 of S.L. 2004, ch. 104 provides: "Sections 1 and 2 of this act shall be in full force and effect on and after July 1, 2004. Section 3 of this act shall be in full force and effect on and after August 1, 2005."

Section 4 of S.L. 2005, ch. 369 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Refund of Taxes.

Where neither state income tax statute, which had been patterned very largely upon the federal statute authorizing recovery of taxes not paid under protest, nor any amendment mentioned whether recovery of taxes depended upon their having been paid under protest, and the supreme court held at the

time the state tax law was passed that other taxes could not be recovered unless there had been a protest at the time of their payment, the legislature intended that income taxes should not be refunded unless they had been paid under protest. *Walker v. Wedgwood*, 64 Idaho 285, 130 P.2d 856 (1942).

63-3067A. Designation by individuals — Trust accounts. —

(a) Every individual who:

- (i) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (c) of this section; or
- (ii) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (c) of this section.

(b) A designation under subsection (a) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(c) The trust accounts authorized to receive moneys designated under subsection (a) of this section are:

- (i) The fish and game set-aside account created by section 36-111, Idaho Code;
- (ii) The Idaho ag in the classroom account created by section 57-815, Idaho Code;
- (iii) The drug enforcement donation account created by section 57-816, Idaho Code;

- (iv) The children's trust fund created by section 39-6007, Idaho Code;
- (v) The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars (\$5.00);
- (vi) The Idaho guard and reserve family support fund created by section 57-820, Idaho Code; and
- (vii) The American red cross of greater Idaho fund created in section 57-821, Idaho Code.

(d) Prior to the distribution of funds into any of the trust accounts specified in subsection (c) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission. [I.C., § 63-3067A, as added by 1987, ch. 337, § 3, p. 709; am. 1989, ch. 127, § 1, p. 277; am. 1990, ch. 388, § 12, p. 1067; am. 2002, ch. 292, § 9, p. 841; am. 2005, ch. 104, § 1, p. 328; am. 2006, ch. 88, § 1, p. 258; am. 2007, ch. 10, § 3, p. 10.]

STATUTORY NOTES

Prior Laws. — Former § 63-3067A, which comprised I.C., § 63-3067A, as added by 1981, ch. 97, § 2, p. 139; am. 1986, ch. 73, § 14, p. 201, was repealed by S.L. 1987, ch. 337, § 2.

Amendments. — The 2006 amendment, by ch. 88, added subsection (c)(vii).

The 2007 amendment, by ch. 10, substi-

tuted "of this section" for "below" at the end of subsection (a)(i); and deleted "which donation shall be ten dollars (\$10.00) if made" from the end of subsection (c)(viii).

Compiler's Notes. — The words "this act" in paragraph (a)(i) refer to S.L. 1987, ch. 337, which is compiled as §§ 39-6007, 57-816, 57-817, 63-3067, and 63-3067A.

63-3067B. Designation by individuals — Trust accounts. —

(a) Every resident individual who:

- (i) Has a refund due and payable for overpayment of taxes under this act may designate all or any portion thereof to be deposited in a trust account specified in subsection (c) below; or
- (ii) Has an income tax liability may, in addition to his tax obligation, include a donation to be deposited in a trust account specified in subsection (c) of this section.

(b) A designation under subsection (a) of this section may be made in any taxable year in such manner and form as prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

(c) The trust accounts authorized to receive moneys designated under subsection (a) of this section are:

- (i) The fish and game set-aside account created by section 36-111, Idaho Code;
- (ii) The Idaho ag in the classroom account created by section 57-815, Idaho Code;
- (iii) The drug enforcement donation account created by section 57-816, Idaho Code;

- (iv) The children's trust fund created by section 39-6007, Idaho Code;
 - (v) The United States olympic account created by section 57-817, Idaho Code, but no donation shall exceed five dollars (\$5.00);
 - (vi) The Alzheimer's disease services account created in section 57-819, Idaho Code;
 - (vii) The community forestry trust account created in section 38-136, Idaho Code; and
 - (viii) The American red cross of greater Idaho fund created in section 57-821, Idaho Code, which donation shall be ten dollars (\$10.00) if made.
- (d) Prior to the distribution of funds into any of the trust accounts specified in subsection (c) of this section from the refund account, the state tax commission shall retain funds for the commission's costs for collecting and administering the moneys in the accounts as follows: three thousand dollars (\$3,000) from each account for start-up costs during the first year of collections, and three thousand dollars (\$3,000) or twenty percent (20%) of the moneys remitted to each account during the fiscal year, whichever is less, from each account during each fiscal year thereafter, which amounts are hereby appropriated to the tax commission. [I.C., § 63-3067B, as added by 1991, ch. 183, § 1, p. 447; am. 1992, ch. 258, § 4, p. 749; am. 2002, ch. 292, § 10, p. 841; am. 2006, ch. 88, § 2, p. 258.]

STATUTORY NOTES

Prior Laws. — Former § 63-3067B, which comprised I.C., § 63-3067B, as added by 1986, ch. 85, § 3, p. 248, was repealed by S.L. 1987, ch. 337, § 2, effective July 1, 1987.

Amendments. — The 2006 amendment,

by ch. 88, added subsection (c)(viii).

Compiler's Notes. — The words "this act" in paragraph (a)(i) refer to S.L. 1991, Chapter 183, which is codified as §§ 57-819 and 63-3067B.

63-3067C. Sunsetting designations. — (1) The designations referred to in section 63-3067A or 63-3067B, Idaho Code, shall expire and no longer appear on the income tax return form when:

- (a) For each of two (2) consecutive calendar years, the amount received by the state tax commission that is designated for a particular trust fund named in section 63-3067A or 63-3067B, Idaho Code, fails to equal or exceed twenty-five thousand dollars (\$25,000); and
- (b) After one (1) year when collections fail to equal or exceed twenty-five thousand dollars (\$25,000), the tax commission has notified the appropriate agency that:
 - (i) The amount received by the state tax commission that is designated for that particular trust fund failed to equal or exceed twenty-five thousand dollars (\$25,000); and
 - (ii) If the amount received by the state tax commission that is designated for the particular trust fund in the next subsequent year fails to equal or exceed twenty-five thousand dollars (\$25,000).

(2) As used in this section, "appropriate agency" means the agency of the state of Idaho that is responsible for administering the programs benefiting from the fund to which amounts designated under section 63-3067A or 63-3067B, Idaho Code, are distributed. If no agency of the state of Idaho has such responsibility, the term means such other private or public entity that

is the principal beneficiary of the funds. [I.C., § 63-3067C, as added by 1997, ch. 177, § 1, p. 495.]

63-3067D. Designation by individuals — Children's trust account.
[Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3067D, as added by 1985, ch. 31, § 4, p. 59; am. 1986, ch. 73, § 17, p. 201, was repealed by S.L. 1987, ch. 337, § 2. See §§ 63-3067A and 63-3067B.

This section was also amended by § 7 of S.L. 1987, ch. 260 effective retroactive to July 1, 1986 to read: "**63-3067D. Designation by individuals — Children's trust account.** — (a) Beginning with tax year 1985, every individual who has a refund due and payable for overpayment of taxes under this chapter may designate all or any portion thereof to be deposited in the children's trust account which is created in section 39-6007, Idaho Code.

"(b) Beginning with tax year 1985, every individual who has an income tax liability may, in addition to his tax obligation, include a donation to be deposited with the state treasurer which shall be placed in the children's trust account.

"(c) A designation under subsection (a) or (b) of this section may be made in any taxable year in such manner as may be prescribed by the state tax commission. The manner and form so prescribed shall be a conspicuous portion of the principal form provided for the purpose of individual taxation.

"(d) No less than quarterly, the tax commission shall distribute the moneys collected from contributing individuals pursuant to

subsection (a) or (b) of this section to the children's trust account.

"(e) Prior to distribution of money into the children's trust account from the refund account established under section 63-3067, Idaho Code, the state tax commission shall retain sufficient funds for the commission's direct actual cost of the collection and administration of these children's trust account moneys. The amount retained by the commission shall not exceed the appropriation authorized to be expended by the legislature. Any unencumbered balance in excess of the actual cost of collecting and administering the children's trust donations by the commission at the end of each fiscal year shall be distributed to the children's trust account.

"(f) Effective on the first day of the calendar year commencing immediately after a total of two million five hundred thousand dollars (\$2,500,000) has been distributed to the children's trust account, the provisions of this section shall no longer be of any force and effect and the state tax commission shall delete the provisions required by subsections (a), (b) and (c) from its tax forms."

Section 10 of S.L. 1987, ch. 260 read: "An emergency existing therefor, which emergency is hereby declared to exist, Sections 2 and 9 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1986."

63-3067E. Designation by individuals — United States olympic account. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3067E, as added by

1987, ch. 6, § 2, was repealed by S.L. 1987, ch. 337, § 2. See §§ 63-3067A and 63-3067B.

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. — (a) Except as otherwise provided in this section, a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court,

within a period of six (6) years from the date of entry of the record of assessment required by section 63-3044, Idaho Code, of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(e) In the case of income received during the lifetime of a decedent, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed or any proceeding in court without assessment for the collection of such tax shall be begun, within twelve (12) months after written request for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state tax commission.

(f) When Idaho taxable income or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitation for issuing a notice of deficiency shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the state tax commission by the taxpayer, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(g) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss claimed in such other tax year may be made and a resulting notice of deficiency may be issued even though such notice of deficiency would otherwise be barred under the provisions of this section.

(h) Notwithstanding any other provisions of this section, when an amended Idaho return is filed within the period of limitations as provided in

subsections (a) and (m) of this section, the period of limitations for issuing a notice of deficiency shall be three (3) years from the date the amended return was filed. However, upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended Idaho return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(i) If a taxpayer has filed an amended federal return, and no corresponding Idaho amended return has been filed with the state tax commission, then the period of limitations for issuing a notice of deficiency shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the taxpayer of the amended federal return. However, upon the expiration of the period of limitations as provided in subsections (a) and (m) of this section, then only those specific items of income, deductions, gains, losses, or credits, which were adjusted in the amended federal return shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(j) Notwithstanding any other provisions of this section, a notice of deficiency, related to items on the return of any pass-through entity, as defined in this section, which other taxpayers are required by law to report, shall be issued to such other taxpayers within the later of three (3) years from the due date of the other taxpayers' return, without regard to extensions, three (3) years from the date the other taxpayers' returns were filed, or three (3) years from the date of filing of the pass-through entity's return. If the pass-through entity files an amended return, notices of deficiency may be issued to the other taxpayers within three (3) years from the date the amended return for the pass-through entity was filed with the state tax commission. If the pass-through entity files an amended return with the internal revenue service, or the internal revenue service issues a final determination to the pass-through entity, then the period of limitations for issuing a notice of deficiency to the other taxpayers shall be reopened and shall not expire until three (3) years from the date of delivery to the tax commission by the pass-through entity of the amended federal return or the later of one (1) year from the date of delivery to the state tax commission by the pass-through entity of the final federal determination, three (3) years from the due date of the pass-through entity's return, without regard to extensions, or three (3) years from the date the pass-through entity's return was filed.

(k) For purposes of this section, "pass-through entity" means a partnership, S-corporation, trust, limited liability company or any other entity whose items of income, deductions, gains, losses and credits must be reported by other taxpayer(s). For further purposes of this section, the term "other taxpayer" shall include, by way of unlimiting example, such taxpayers as partners, shareholders, beneficiaries, joint venturers or investors.

(l) In the case of a duplicate return filed under section 63-217(1)(b), Idaho Code, the limitation under this section shall be the later of one (1) year from

the filing of the duplicate return or the date otherwise applicable under this section.

(m) Prior to the expiration of the time prescribed in this section for the issuance of a notice of deficiency for the tax imposed in this chapter, both the state tax commission, its delegate or deputy, and the taxpayer may consent in writing to extend the period of time within which a notice of deficiency may be issued. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with this subsection, the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of issuing a notice of deficiency to the other taxpayers reflecting the adjustments to the pass-through entity's return.

(n) The expiration of the period of limitations as provided in this section shall be suspended for the time period during which the state tax commission is prohibited from issuing a notice of deficiency, making the assessment, or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(o) For the purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed. [I.C., § 63-3068, as added by 1993, ch. 47, § 2, p. 119; am. 1995, ch. 111, § 34, p. 347; am. 1996, ch. 44, § 1, p. 114; am. 1997, ch. 113, § 4, p. 274; am. 2002, ch. 35, § 11, p. 66; am. 2005, ch. 23, § 7, p. 61.]

STATUTORY NOTES

Prior Laws. — Former § 63-3068, which comprised 1959, ch. 299, § 68, p. 613; am. 1961, ch. 328, § 26, p. 622; am. 1969, ch. 319, § 17, p. 982; am. 1971, ch. 302, § 5, p. 1242; am. 1982, ch. 44, § 2, p. 69; am. 1989, ch. 26, § 1, p. 30; am. 1989, ch. 363, § 3, p. 909, was repealed by S.L. 1993, ch. 47, § 1, effective January 1, 1993.

Effective Dates. — Section 5 of S.L. 1993, ch. 47 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993. The provisions of this act apply to all returns, amendments to

returns, claims for refund or credit of tax, notices of deficiency and other actions taken after the effective date of this act without regard to the taxable year effected, unless the statutes of limitations, as provided in sections 63-3068 and 63-3072, Idaho Code, in effect on December 31, 1992, would have prevented the action on the effective date of this bill."

Section 35 of S.L. 1995, ch. 111 provided that the act shall be in full force and effect on January 1, 1996.

Section 8 of S.L. 2005, ch. 23 declared an emergency retroactively to January 1, 2005 and approved February 22, 2005.

JUDICIAL DECISIONS

ANALYSIS

Application of section.
Bankruptcy.

Application of Section.

Neither internal revenue service's ability to make assessments nor tax commission's ability to assess is determinative of the applica-

tion of this section, which applies whenever the service or the tax commission is unable to collect or assess taxes; mere permission to assess taxes without the ability to collect such

taxes does not limit the application of this section. In *re Strickland*, 194 Bankr. 888 (Bankr. D. Idaho 1996).

Trial court's findings that taxpayers had committed tax fraud under subsection (c) of this section was supported by substantial and competent evidence where the husband and wife taxpayers falsely claimed to be Nevada residents to avoid paying Idaho state income tax; the husband taxpayer represented that he lived in an apartment in Reno, Nevada, but only had a mail drop, he produced no documentation at trial that he had been renting motel rooms in Reno on a week-to-week basis, and he was a candidate for the Idaho

senate, which required him to be an Idaho resident. *Idaho State Tax Comm'n v. Hautzinger*, 137 Idaho 401, 49 P.3d 406 (2002).

Bankruptcy.

This section tolls the statute of limitations for assessing and enforcing Idaho state income taxes while the taxpayer is protected by the automatic stay in bankruptcy and for a period of thirty days thereafter and also tolls the three-year period set forth in the Bankruptcy Code provision. In *re Strickland*, 194 Bankr. 888 (Bankr. D. Idaho 1996).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction.

Deficiency assessment.

Extension of limitation.

Federal adjustments.

Construction.

The words "voluntary action on the part of the taxpayer" refer to situations when the taxpayer has voluntarily filed an amended federal return, and the words "and no corresponding adjustment has been reported by taxpayer to the state" refer to the filing of a corresponding amended return by the taxpayer with the state tax commission. *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 556 P.2d 1197 (1976).

Deficiency Assessment.

In that this section extends the limitation on tax assessments when taxpayer's taxable income is readjusted for federal income tax purposes and taxpayer does not file an amended return with the state, a deficiency assessment initiated by the state tax commission more than three years after taxpayer's

return was filed was not barred by this statute of limitation. *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 556 P.2d 1197 (1976).

Extension of Limitation.

When a taxpayer's taxable income has been readjusted for federal income tax purposes and the taxpayer does not file an amended return with the state, the state tax commission will have one year dating from the giving of notice required in § 63-3069 in which to assess the taxpayer's income tax liability to the state. *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 556 P.2d 1197 (1976).

Federal Adjustments.

For mine license tax purposes, final federal adjustments relate to the years under examination. *Hecla Mining Co. v. Idaho State Tax Comm'n*, 108 Idaho 147, 697 P.2d 1161 (1985).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, § 710.

A.L.R. — Suspension of running of period

of limitation, under 26 U.S.C.A. § 6503, for federal tax assessment or collection. 160 A.L.R. Fed. 1.

63-3069. Notice of adjustment of federal or state tax liability. —

(1) Upon final determination of any deficiency or refund of federal taxes written notice shall be immediately sent to the state tax commission by the taxpayer.

(2) Upon final determination of any deficiency or refund of income tax due to another state or territory to which the credit for taxes paid another state or territory applies, as provided in section 63-3029, Idaho Code, written

notice shall be immediately sent to the state tax commission by the taxpayer. [1959, ch. 299, § 69, p. 613; am. 2000, ch. 18, § 1, p. 34.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

JUDICIAL DECISIONS

Cited in: *Magnuson v. Idaho State Tax Comm'n*, 97 Idaho 917, 556 P.2d 1197 (1976).

63-3069A. Special statute of limitations. — When a final determination of any income tax due to another state or territory changes the amount of the credit for taxes paid to another state or territory as provided in section 63-3029, Idaho Code:

(1) A claim for any credit or refund resulting from the change shall be filed within the later of:

(a) The time required by section 63-3072, Idaho Code; or

(b) One (1) year of the date the adjustment became final under the laws of the other state or territory.

(2) The period of limitation for issuing a notice of deficiency shall not expire until the later of:

(a) The time provided by section 63-3068, Idaho Code; or

(b) One (1) year from the date of delivery to the state tax commission by the taxpayer of the notice required by section 63-3069, Idaho Code. [I.C., § 63-3069A, as added by 2000, ch. 18, § 2, p. 34.]

63-3070. False return or failure to file return. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1959, ch. 299, § 70, p. 613, was repealed by S.L. 1989, ch. 363, § 2.

63-3071. Destruction of old returns. — After the expiration of the period of limitations fixed in section 63-3068 [Idaho Code], the state tax commission may destroy old returns. [1959, ch. 299, § 71, p. 613.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

63-3072. Credits and refunds. — (a) Subject to the provisions of subsections (b), (c) and (h) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax administered

by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) Except in regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions.

(c) With regard to amounts withheld as provided in section 63-3035, 63-3035A or 63-3036, Idaho Code, or amounts paid as estimated payments under section 63-3036A, Idaho Code, a claim for credit or refund shall be made within three (3) years from the due date of the return, without regard to extensions, for the taxable year in respect to which the tax was withheld or paid.

(d) Notwithstanding any other provisions of this section, when Idaho taxable income and/or tax credits for any taxable year have been adjusted as a result of a final federal determination, the period of limitations for claiming a refund or credit of tax, penalties, or interest shall be reopened and shall not expire until the later of one (1) year from the date of delivery of the final federal determination to the taxpayer by the internal revenue service, three (3) years from the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. For purposes of this subsection, the term "final federal determination" shall mean the final resolution of all issues which were adjusted by the internal revenue service. When the final federal determination is submitted, the taxpayer shall also submit copies of all schedules and written explanations provided by the internal revenue service. Upon the expiration of the period of limitations as provided in subsections (b) and (h) of this section, only those specific items of income, deductions, gains, losses or credits which were adjusted in the final federal determination shall be subject to adjustment for purposes of recomputing Idaho income, deductions, gains, losses, credits, and the effect of such adjustments on Idaho allocations and apportionments.

(e) If a claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the period of limitations prescribed in subsection (b) of this section, the period shall be that period which ends with the expiration of the fifteenth day of the fortieth month following the end of the taxable year of the net operating loss or capital loss which results in such carryback.

(f) If an adjustment, which was made within the period of limitations as provided in this section, affects the amount of tax credit, net operating loss, or capital loss, claimed in a taxable year other than the tax year in which the adjustment is made, then adjustments to the credit, net operating loss, or capital loss, claimed in such other tax year may be made and a claim for

credit or refund of tax, penalties or interest may be made even though such claim would otherwise be barred under the provisions of this section.

(g) In the case of a duplicate return filed under section 63-217(1)(b), Idaho Code, the limitations under this section shall be the later of one (1) year from the filing of the duplicate return or the date otherwise applicable under this section.

(h) Prior to the expiration of the time prescribed in this section for credit or refund of any tax imposed by the provisions of this chapter, both the state tax commission or its delegate or deputy and the taxpayer may consent in writing to extend such period of time. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. When a pass-through entity extends the period of limitations in accordance with the provisions of this subsection the period of limitations for the other taxpayers is automatically extended for the same period for the purpose of claiming a credit or refund of tax, penalties or interest by the other taxpayers reflecting the pass-through entity adjustments.

(i) The expiration of the period of limitations as provided in this section shall be suspended for the time period between the issuance by the state tax commission of a notice under either section 63-3045 or 63-3065, Idaho Code, and the final resolution of any proceeding resulting from the notice.

(j) Appeal of a state tax commission decision denying in whole or in part a claim for credit or refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code.

(k) For purposes of this section, "return" includes a notice of deficiency determination issued by the state tax commission when no return was filed by the taxpayer. Such a return is deemed filed on the date the taxes determined by the state tax commission are assessed. [I.C., § 63-3072, as added by 1993, ch. 47, § 3, p. 119; am. 1996, ch. 44, § 2, p. 114; am. 2001, ch. 56, § 4, p. 100; am. 2002, ch. 35, § 12, p. 66; am. 2007, ch. 10, § 4, p. 10.]

STATUTORY NOTES

Cross References. — State board of examiners, claims against state, approval or disapproval, § 67-2018.

Board of tax appeals established, § 63-3801.

Prior Laws. — Former § 63-3072, which comprised 1959, ch. 299, § 72, p. 613; am. 1961, ch. 328, § 27, p. 622; am. 1969, ch. 319, § 18, p. 982; am. 1970, ch. 222, § 9, p. 621; am. 1971, ch. 214, § 1, p. 936; am. 1982, ch. 44, § 1, p. 69; am. 1989, ch. 26, § 2, p. 30, was repealed by S.L. 1993, ch. 47, § 1, effective January 1, 1993.

Amendments. — The 2007 amendment, by ch. 10, in (e) inserted "or a capital loss carryback" following "operating loss carryback" and inserted "or capital loss" fol-

lowing "the taxable year of the net operating loss."

Effective Dates. — Section 5 of S.L. 1993, ch. 47 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993. The provisions of this act apply to all returns, amendments to returns, claims for refund or credit of tax, notices of deficiency and other actions taken after the effective date of this act without regard to the taxable year effected, unless the statutes of limitations, as provided in sections 63-3068 and 63-3072, Idaho Code, in effect on December 31, 1992, would have prevented the action on the effective date of this bill."

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Limitations.

The fact that the taxpayer chose to claim the entire amount of net operating losses (NOLs) as deductions for later tax years rather than applying them first to earlier tax years, as required, and the fact that the tax commission subsequently correctly applied the NOLs and asserted a deficiency in the taxes due for the later tax years, did not preclude the application of the appropriate limitation period. *Harman's of Idaho, Inc. v. Idaho State Tax Comm'n*, 114 Idaho 740, 760 P.2d 1156 (1988).

The fact that under § 63-3022 the tax com-

mission first carried net operating losses back to earlier tax years before applying them to later tax years did not entitle the taxpayer to file amended returns for the earlier tax years and to treat the date of these amended returns as being the date for the beginning of a three-year statute of limitations where, by the time the tax commission issued the notice of deficiency, more than three years had passed since the filing of the returns of the earlier tax years. *Harman's of Idaho, Inc. v. Idaho State Tax Comm'n*, 114 Idaho 740, 760 P.2d 1156 (1988).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, §§ 608-610.

A.L.R. — Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund. 1 A.L.R.6th 1.

Voluntary payment doctrine as bar to recovery of payment of generally unlawful tax. 1 A.L.R.6th 229.

What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments. 160 A.L.R. Fed. 137.

63-3073. Interest on refunds and credits. — Upon the allowance of a credit or refund of any tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate provided in section 63-3045, Idaho Code, from the date such tax, penalty, or sum was paid or from the date the return was required to be filed, whichever date is the later, to the date of the allowance of the refund, or in the case of a credit, to the due date of the amount against which the credit is taken; provided, however, that in case of a voluntary and unrequested payment in excess of actual tax liability, no interest shall be allowed when such excess is refunded or credited.

Interest on refunds resulting from net operating loss carryback claims or from capital loss carryback claims shall be computed from the last day of the taxable year in which the net operating loss or capital loss arises. [1959, ch. 299, § 73, p. 613; am. 1969, ch. 319, § 19, p. 982; am. 1976, ch. 270, § 3, p. 913; am. 1981, ch. 290, § 2, p. 597; am. 1997, ch. 57, § 14, p. 95; am. 1998, ch. 51, § 3, p. 201.]

STATUTORY NOTES

Cross References. — Credits and refunds, § 63-3072.

Judicial review, § 63-3049.

Overpayments, § 63-3041.

Revenue received, state refund account, § 63-3067.

Effective Dates. — Section 4 of S.L. 1976, ch. 270 declared an emergency and provided

the act should be in full force and effect on and after approval retroactive to January 1, 1976. Approved March 31, 1976.

Section 16 of S.L. 1997, ch. 57 declared an emergency and provided that the act should be in full force and effect on and after its approval, retroactive to January 1, 1997. Approved March 13, 1997.

Section 6 of S.L. 1998, ch. 51, declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

JUDICIAL DECISIONS

Cited in: American Oil Co. v. Neill, 90 Idaho 333, 414 P.2d 206 (1966); Idaho State

Tax Comm'n v. Railbox Co., 116 Idaho 909, 782 P.2d 32 (1989).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 611.

A.L.R. — Voluntary payment doctrine as

bar to recovery of payment of generally unlawful tax. 1 A.L.R.6th 229.

63-3074. Actions against state of Idaho. — The state tax commission may be made a party defendant in a civil action by any person aggrieved under this chapter or any other chapter in which this section is expressly incorporated by reference by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final money judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the state refund fund created by section 63-3067, Idaho Code. No seizure or sale shall be considered unlawful if it occurs in the collection of any deficiency which was included in the person's tax return or asserted in a notice of deficiency determination pursuant to section 63-3045 or 63-3629, Idaho Code, or in a jeopardy assessment pursuant to the provisions of section 63-3629 or 63-3065, Idaho Code. [1959, ch. 299, § 74, p. 613; am. 1971, ch. 214, § 3, p. 936; am. 1993, ch. 3, § 6, p. 5.]

STATUTORY NOTES

Cross References. — Judicial review, § 63-3049.

State refund account created, § 63-3067.

Effective Dates. — Section 4 of S.L. 1971, ch. 214 declared an emergency. Approved March 24, 1971.

Section 7 of S.L. 1993, ch. 3 read: "An

emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1993." Approved February 19, 1993.

JUDICIAL DECISIONS

ANALYSIS

Application.

Failure to cite section.

Idaho tort claims act.

Intent.

Notice of claim not required.

Tort remedy not provided.

Application.

This statute does not authorize a tort claim, but provides a limited, remedial measure enabling taxpayers to challenge a wrongful collection of taxes or the various enforcement actions of the commission, including the seizure of property. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

Failure to Cite Section.

In action by taxpayer for trespass on his land and unlawful seizure of his property, where although taxpayer did not cite this section in his complaint the allegations in the complaint clearly stated a cause of action under it, the pleadings were sufficient to raise the question of unlawful seizure of the property under this section, since I.R.C.P. 8(a)(1) requires only a simple, concise and direct statement fairly appraising the defendant of the claims and grounds upon which the claims contained in the complaint rest. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

Idaho Tort Claims Act.

While both § 6-904A and this section deal with lawsuits against governmental entities, the Idaho Tort Claims Act (ITCA) governs procedural issues in tort claims against the state and there is no reason the ITCA should be applied to limit a taxation statute which allows a cause of action that does not sound in tort; this section, which appears in the Idaho Income Tax Act, and §§ 6-904A and 6-905, which appear in the ITCA, are not in pari

materia and thus there is no reason to construe them together, or to allow the more recent statute to control. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

Intent.

The obvious intent of this section is to provide a limited remedy to taxpayers who seek recovery of property or money wrongfully seized or collected in payment of tax. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

Notice of Claim Not Required.

In action by taxpayer against state tax commission and sheriff for trespassing on property and illegal seizure of property under §§ 6-905 and 6-908, taxpayer need not first present a notice of claim before proceeding under this section. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

Tort Remedy Not Provided.

This section does not provide a tort remedy, but provides for the refund of taxes illegally or erroneously collected or for the return of personal property illegally or erroneously seized to satisfy a tax obligation; therefore, an action under this section is not impliedly or expressly prohibited by § 6-904A and because this section does not provide a tort remedy, it is not irreconcilable with or repugnant to the statute governing tort claims against the state, § 6-904A. *Greenwade v. Idaho State Tax Comm'n*, 119 Idaho 501, 808 P.2d 420 (Ct. App. 1991).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 1059-1063.

63-3075. Penalties. — (a) Any person required under this act to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this act, who wilfully fails to pay such tax, make such returns, keep such records, or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than three hundred dollars (\$300), or imprisoned for not more than six (6) months or both.

(b) Any person required under this act to collect, account for and pay over any tax imposed by this act, who wilfully fails to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this act or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a

felony and, upon conviction thereof, be fined not more than ten thousand dollars (\$10,000), or imprisoned for not more than five (5) years or both.

(c) Any person who wilfully aids or assists in, or procures, counsels, or advises, the preparation or presentation under, or in connection with any matter arising under, this act, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony and, upon conviction thereof, be fined not more than ten thousand dollars (\$10,000), or imprisoned for not more than five (5) years, or both.

(d) Notwithstanding the provisions of sections 19-402 and 19-403, Idaho Code, no person shall be prosecuted, tried, or punished for any of the offenses contained in subsections (a), (b), or (c) of this section, unless the complaint or indictment is filed within six (6) years from the commission of the offense. [1959, ch. 299, § 75, p. 613; am. 1989, ch. 363, § 1, p. 909.]

STATUTORY NOTES

Compiler's Notes. — The words enclosed in parentheses so appeared in the law as enacted. For words "this act" see Compiler's Notes, § 63-3001.

JUDICIAL DECISIONS

ANALYSIS

Failure to make return.
Jury instructions.

Failure to Make Return.

The crime of failing to make an income tax return includes failure to "file" the return. *State v. Gibson*, 114 Idaho 771, 760 P.2d 1187 (Ct. App. 1988).

Jury Instructions.

Where the jury was not instructed to find the element of "evading, defeating or avoiding" sales tax, which would have raised the

defendant's offense to a felony as charged, and where the instruction on the misdemeanor sales tax violation did not define the crime as a lesser included offense of a felony sales tax violation, the defendant could not be sentenced for a felony conviction. *State v. Nunez*, 133 Idaho 13, 981 P.2d 738 (1999).

Cited in: *In re Padgett*, 95 Idaho 141, 504 P.2d 814 (1972).

RESEARCH REFERENCES

Am. Jur. — 72 Am. Jur. 2d, State and Local Taxation, §§ 856-865.

63-3076. Penalty for divulging information. — In regard to the administration of the taxes imposed by this chapter or by any other statute to which this section and section 63-3077, Idaho Code, expressly apply:

(1) No state tax commissioner, deputy, or any clerk, agent, contractor or employee, or any centralized state computer facility employee or any person formerly employed in any such position shall knowingly divulge or make known to any person in any manner any tax return or tax information whatsoever obtained directly or indirectly by him in the discharge of his duties, except as provided by statute, court order or rules of the state tax commission promulgated under this section or section 63-3077, Idaho Code.

(2) In any action or proceeding brought for the collection, remission, cancellation or refund of the whole or any part of a tax imposed under the provisions of this chapter, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in such returns and tax information may be furnished or made accessible to the officers or representatives of the state or county charged with the duty of investigating, prosecuting or defending the same; and all such returns and tax information and the statements and correspondence relating thereto may be produced in evidence in any action or proceeding, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such return. In addition, the state tax commission may provide information in its possession to a law enforcement agency or prosecutor pursuant to the investigation or prosecution of an offense under section 18-915, 18-1353, 18-1353A, 18-1354, 18-1355 or 18-6710, Idaho Code, when the victim of such an offense is, or at the time of the action was, a member, employee or agent of the state tax commission.

(3) A copy of all or any portion of a federal return, or information reflected on such federal return, which may be attached to an Idaho return, or otherwise come into the possession of any commissioner, deputy, clerk, agent, contractor or employee, or any employee of a centralized state computer facility, shall not be disclosed in any manner whatsoever other than as authorized by this section.

(4) Any officer, agent, clerk, contractor or employee who knowingly violates any of the provisions of this section shall be guilty of a felony and, upon conviction thereof, be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment for not more than five (5) years. Such officer, agent, clerk, contractor or employee upon such conviction shall also forfeit his office, employment or contract and shall be incapable of holding any public office in this state for a period of two (2) years thereafter. Nothing in this subsection shall limit the state tax commission's ability to take disciplinary actions authorized in chapter 53, title 67, Idaho Code.

(5) As used in this section and section 63-3077, Idaho Code, the term:

(a) "Return" means any of the following whether required, provided for, or permitted by any statute administered by the state tax commission that is filed with the state tax commission by, for, or with respect to any person:

- (i) Any tax or information return;
- (ii) Declaration of estimated tax;
- (iii) Claim for refund;
- (iv) Any amendment or supplement thereto, including supporting schedules, attachments or lists that are supplemental to, or part of, the return.

(b) "Tax information" means:

- (i) A taxpayer's identity;
- (ii) The nature, source or amount of a taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments;

- (iii) The status of the processing or investigation of the taxpayer's liability;
- (iv) Any other data received by, recorded by, prepared by, furnished to or collected by the state tax commission with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of any person pursuant to the laws administered by the state tax commission for any tax, penalty, interest, fine, forfeiture, other imposition or offense;
- (v) Any part of a written determination, or documents relating to a written determination, that is not open to public inspection; and
- (vi) Information filed with, or furnished to, the state tax commission by or for the taxpayer to whom the information relates that is not otherwise public information. [1959, ch. 299, § 76, p. 613; am. 1969, ch. 319, § 20, p. 982; am. 1978, ch. 108, § 1, p. 225; am. 1979, ch. 48, § 1, p. 137; am. 1993, ch. 94, § 8, p. 224; am. 2000, ch. 297, § 1, p. 1025.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 590.

63-3077. Information furnished to certain officials. — (1) The state tax commission, under such rules as it may prescribe, may disclose tax returns or tax information to:

- (a) The commissioner of internal revenue of the United States or his delegate or the financial management services of the department of the treasury of the United States; or
- (b) The proper officer of any state imposing a tax similar to a tax to which this section applies or the multistate tax commission or its delegate or the governing entity of the international fuels tax agreement or its delegate; of any taxpayer making or who may be required to make returns, with the state tax commission or may furnish to such officer or his authorized representative an abstract or copy of any tax return or tax information or any information disclosed by the report of any audit or investigation relating to any taxpayer; but such permission shall be granted or information furnished to such officer or his representatives only if the statutes of the United States or such other state, as the case may be, grant substantially similar privileges to the state tax commission.

(2) Notwithstanding the provisions of this chapter as to secrecy, any duly constituted committee of either branch of the state legislature shall have the right to inspect returns upon request.

(3) Nothing in this chapter shall prohibit a taxpayer, or his authorized representative, upon proper identification, from inspecting or obtaining a

copy of his own tax returns or tax information or authorizing, in writing, the disclosure of information to a third party.

(4) Any resident or part-year resident individual taxpayer making an income tax return, shall furnish the state tax commission with the location of any residential property owned by the taxpayer and occupied by the taxpayer as his primary dwelling place on the first day of January of the year following the year to which the tax return relates. The state tax commission is hereby authorized and empowered to deliver to the county assessor of any county of the state of Idaho information relating to a taxpayer's place of residence or domicile. The information may be used by county assessors and boards of equalization to assist in determining the validity of any homeowner's entitlement to the exemption provided in section 63-602G, Idaho Code. Information disclosed to county officials under this subsection may be used only to determine the validity of any homeowner's entitlement to the exemption provided in section 63-602G, Idaho Code, and is not otherwise subject to public disclosure.

(5) The state tax commission additionally is authorized to utilize any centralized state computer facility.

(6) Nothing in this section or section 63-3076, Idaho Code, shall require the state tax commission to disclose information not required to be disclosed under the provisions of sections 9-335 through 9-348, Idaho Code, or prevent the state tax commission from disclosing the current validity of any permit or license issued by the state tax commission or information that is otherwise publicly available. [1959, ch. 299, § 77, p. 613; am. 1961, ch. 328, § 28, p. 622; am. 1969, ch. 319, § 21, p. 982; am. 1972, ch. 398, § 6, p. 1149; am. 1992, ch. 9, § 1, p. 15; am. 1996, ch. 322, § 63, p. 1029; am. 2000, ch. 297, § 2, p. 1025.]

STATUTORY NOTES

Cross References. — Multistate tax compact, §§ 63-3701 — 63-3709.

Compiler's Notes. — Section 29 of S.L. 1961, ch. 328 read: "If any provisions, parts or portions of this act or the application thereof to any taxpayer, person or circumstances shall be held invalid, such invalidity shall not affect the balance of the provisions of this act or the application thereof, and to this end the provisions of this act are declared to be severable."

Effective Dates. — Section 30 of S.L. 1961, ch. 328 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act, upon its passage and ap-

proval, shall take effect and be in force retroactively from and after January 1, 1961, and shall pertain only to taxable years commencing on or after January 1, 1961; except that Section 11 amending Section 63-3028 (now repealed), Idaho Code, and Section 14 amending Section 63-3031, Idaho Code, shall take effect and be in force retroactively from and after January 1, 1959, and shall pertain only to taxable years commencing on or after January 1, 1959."

Section 73 of S.L. 1996, ch. 322 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

Cited in: Worthen v. State, 96 Idaho 175, 525 P.2d 957 (1974).

63-3077A. Agreements for exchange of information and joint administration with department of labor. — (a) The state tax commis-

sion and the department of labor may enter into a written agreement for exchange of information relating to tax laws administered by the state tax commission and the employment security law administered by the department of labor. Any information so exchanged shall be confidential information in the hands of the recipient thereof and may be used only for the following:

(1) Determining whether the person to whom the information relates may have an undischarged duty or liability under the employment security law or the tax laws administered by the state tax commission, the amount of such liability, the person's whereabouts, social security number, and information helpful in collecting any liability due.

(2) Administering any joint agreement between the department of labor and the state tax commission relating to employment security taxes and income tax withholding for the common registration of employers, common tax reporting forms, centralized filing and processing of forms.

(3) Administration of the state directory of new hires provided in chapter 16, title 72, Idaho Code.

(b) No such information shall be public information unless it is used in the course of a judicial proceeding arising under the employment security law or the tax laws administered by the state tax commission.

(c) An agreement made pursuant to this section may provide for the offset of any refunds owed to any person by either party to the agreement against any tax liability, overpayment of benefits liability, and any penalties and interest thereon owed to either party to the agreement. No offset may be made unless the liability against which it is applied is final, without any further right on the part of the person owing the liability to either administrative or judicial review. [I.C., § 63-3077A, as added by 1985, ch. 23, § 1, p. 40; am. 1998, ch. 230, § 5, p. 782; am. 2006, ch. 38, § 4, p. 105; am. 2007, ch. 360, § 23, p. 1061.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 38, inserted “commerce and” in the section heading; in the introductory paragraph of subsection (a), inserted “commerce and” twice and substituted “commission and the employment security law administered by” for “commission or”; in subsection (a)(1), substituted “the employment security law or the tax laws administered by the state tax commission” for “any tax law of this state” and “any liability due” for “taxes due”; inserted “commerce and” in subsection (a)(2); substituted “the employment security law or the tax laws administered by the state tax commission” for “a tax statute of this state” at the end of subsection (b); and substituted “liability, overpayment of benefits liability, and any penalties and interest thereon owed to either party to the agreement” for “liability or overpayment of benefits owed to the other party” in subsection (c).

The 2007 amendment, by ch. 360, deleted

“commerce and” following “department of” throughout the section.

Legislative Intent. — Section 1 of S.L. 1998, ch. 230 provides: “STATEMENT OF LEGISLATIVE INTENT. It is the purpose of this act [which, in part, added this section] to reduce tax compliance burdens of employers and to permit the department of labor and the state tax commission to make the most efficient use of their powers and resources by enabling the department and the commission to cooperate in matters relating to employment security taxes and income tax withholding through common registration of employers, common tax reporting forms, centralized filing of returns and receipting of revenue and effective exchange of information.”

Effective Dates. — Section 7 of S.L. 1998, ch. 230 provided that this act shall be in full force and effect on and after January 1, 1999.

Section 5 of S.L. 2006, ch. 38 declared an emergency. Approved March 11, 2006.

63-3077B. Agreements for exchange of information with industrial commission. — The state tax commission and the industrial commission may enter into a written agreement for exchange of information relating to persons, firms, corporations, partnerships or associations who are or may be conducting business operations in this state. Such information shall be confidential to the recipient and may be used only for purposes of determining whether the person to whom the information relates may have an undischarged duty or obligation under the tax laws administered by the tax commission or may have an obligation to secure worker's compensation insurance coverage under the laws administered by the industrial commission. No such information shall be public information unless it is used in the course of a judicial proceeding arising under the laws of this state. The information provided by the tax commission shall be limited to the following:

- (1) Names of individuals operating the business.
- (2) The business name.
- (3) The mailing address.
- (4) The physical location of the business.
- (5) The effective date of the withholding tax permit.
- (6) The contact person.
- (7) The telephone number of the contact person. [I.C., § 63-3077B, as added by 1990, ch. 334, § 1, p. 911.]

STATUTORY NOTES

Cross References. — Industrial commission, § 72-501 et seq.

63-3077C. Agreement for exchange of information with department of fish and game. — The state tax commission and the department of fish and game may enter into a written agreement for exchange of information relating to an individual's place of residence or domicile. Such information shall be confidential to the recipient and may be used by the department of fish and game only for purposes of determining whether a person who has purchased a resident fish and game license and to whom the information relates is entitled to purchase a resident fish and game license, or by the state tax commission for determining if the individual is complying with laws relating to taxation. No such information shall be public information unless it is used in the course of a judicial proceeding arising under the laws of this state. The information provided by the state tax commission shall be limited to the following:

- (1) Identification of an individual.
- (2) An individual's home address.
- (3) An individual's residency status. [I.C., § 63-3077C, as added by 2002, ch. 79, § 1, p. 178.]

STATUTORY NOTES

Cross References. — Department of fish and game, § 36-101 et seq.

63-3077D. Agreement for collection of tax. — (1) The state tax commission may enter into agreements with the United States secretary of the treasury through the internal revenue service or the financial management service of the department of the treasury of the United States providing for the mutual offset of any refunds or other amount payable by either party against liabilities owed to the other party to the agreement. Any such agreement shall require that no offset may be made unless the liability against which it applies is final, without any further right on the part of the person owing the liability to either administrative review or judicial review.

(2) No refunds from this state shall be available for offset against any federal debt:

(a) Until any debts subject to offset that are owed to this state or agency thereof have been satisfied; or

(b) During any time when a reciprocal program for offset from federal refunds for tax debts owing to this state is not in effect. [I.C., § 63-3077D, as added by 2006, ch. 55, § 1, p. 165.]

63-3078. Failure to collect and pay over tax, or attempt to evade or [or] defeat tax. — Any person required to collect, truthfully account for and pay over any tax imposed by this title who wilfully fails to collect such tax, or truthfully account for and pay over such tax, or wilfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over. No penalty shall be imposed under this or other Idaho Code sections for any offense to which this section is applicable except and to the extent that such would be imposed when this section is interpreted in a manner similar to the interpretation given to section 6672(a) of the internal revenue code. [1959, ch. 299, § 78, p. 613; am. 1967, ch. 294, § 11, p. 828; am. 1997, ch. 380, § 1, p. 1211.]

STATUTORY NOTES

Cross References. — Computing taxable income of multistate and unitary corporations, § 63-3027.

Penalties in general, § 63-3075.

Taxes on corporate franchises and income, §§ 63-3025, 63-3025A.

Federal References. — Section 6672(a) of the Internal Revenue Code, referred to in this section, is compiled as 26 U.S.C. § 6672(a).

Compiler's Notes. — The bracketed word "or" in the section heading was inserted by the compiler.

Section 12 of S.L. 1967, ch. 294 read: "In the event the office of the tax collector is merged with the state tax commission, determinations, jeopardy determinations, redeterminations, compromises, closing agreements and similar responsibilities required to be performed by the tax collector under the Idaho

Income Tax Act and the Idaho Sales Tax Act shall be performed by the member of the state tax commission assigned the duty of supervisor of the division of taxation involved." The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission.

Effective Dates. — Section 13 of S.L. 1967, ch. 294 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect from and after January 1, 1967. Section 1 of this act defining 'Internal Revenue Code' shall be retroactive to October 10, 1966, insofar as such definition includes reference to changes made in sections 48 and 167 of the Internal Revenue Code on that date and the changes there made are in this act adopted retroactively to such date." Approved April 6, 1967.

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 254.

63-3079. Franchise tax not repealed. — Nothing in this act shall be construed as repealing any law requiring corporations and other forms of associations to pay an annual franchise tax based on their income or on premiums collected or according to the amount of business transacted. [1959, ch. 299, § 79, p. 613; am. 1981, ch. 132, § 1, p. 221.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3001.

Effective Dates. — Section 2 of Acts 1981, ch. 132 declared an emergency and provided

that the act should be in full force and effect retroactive to January 1, 1981. Approved March 27, 1981.

63-3080. Not a property tax. — For the purpose of raising revenue the taxable income required to be shown on returns under this act and taken as a basis for determining the tax hereunder shall not be classified or held or construed to be property. [1959, ch. 299, § 80, p. 613.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3001.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Constitutionality. *

Provision that income should not be classified as property was not unconstitutional.

Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

63-3081. Transition provisions. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised, 1959, ch. 299, § 81, p. 613, was

repealed by S.L. 1997, ch. 157, § 15, effective January 1, 1997.

63-3082. Additional tax required when filing income tax return. — (1) Every person required to file an income tax return shall pay a tax of ten dollars (\$10.00). For this purpose, a husband and wife filing a joint return shall be deemed a single person. This tax shall be in the nature of an excise tax upon the receipt of the income which requires the filing of such return.

(2) When, pursuant to section 63-3022L, Idaho Code, the income tax of an individual officer, director, shareholder, partner or member of a corporation or partnership, or of a beneficiary of a trust or estate is paid by the corporation, partnership, trust or estate, the corporation, partnership, trust

or estate shall also pay the tax imposed in subsection (1) of this section for each individual.

(3) For purposes of this section, a husband and wife filing a joint federal return may be deemed a single individual. [1959, ch. 303, § 1, p. 654; am. 1982, ch. 203, § 9, p. 533; am. 1983, ch. 221, § 3, p. 616; am. 1998, ch. 51, § 4, p. 201; am. 1999, ch. 60, § 4, p. 156; am. 2000, ch. 38, § 2, p. 70.]

STATUTORY NOTES

Cross References. — Joint returns, § 63-3031.

Compiler's Notes. — This tax is to be credited to the permanent building fund, see § 57-1110.

Effective Dates. — Chapter 104 of S.L. 1977 provided the following: "Section 1. The provisions of §§ 63-3082 through 63-3087, Idaho Code, relating to the imposition and collection of an excise tax in the amount of ten dollars (\$10.00) upon every person required to file an Idaho income tax return, shall be held in abeyance and inoperable for any taxable year commencing on or after January 1, 1977 only, but shall be fully implemented and operable again for any taxable year commencing on and after January 1, 1978.

"Section 2. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroactively to January 1, 1977." Approved March 17, 1977.

Section 10 of S.L. 1982, ch. 203 read: "Sec-

tion 1 of this act shall be effective for corporation taxable years ending on and after July 1, 1983. Sections 2, 7, 8 and 9 of this act shall be effective on and after January 1, 1983. Sections 3, 4 and 5 of this act shall be effective on and after July 1, 1983. Section 6 of this act shall be effective on and after July 1, 1982."

Section 4 of S.L. 1983, ch. 221 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to January 1, 1983. Approved April 13, 1983.

Section 6 of S.L. 1998, ch. 51, declared an emergency and provided this act shall be in full force and effect on and after March 17, 1998, and retroactively to January 1, 1998. Approved March 17, 1998.

Section 5 of S.L. 1999, ch. 60 declared an emergency retroactively to January 1, 1999 and approved March 15, 1999.

Section 6 of S.L. 2000, ch. 38 declared an emergency retroactively to January 1, 2000 and approved March 22, 2000.

63-3083. "Person" defined. — "Person" as used in this act shall mean any corporation, individual, or estate, trust, or tax option corporation, the income of which is neither distributed nor otherwise reportable as a part of the taxable income of another taxpayer. [1959, ch. 303, § 2, p. 654; am. 1969, ch. 319, § 22, p. 982.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1959, ch. 303 compiled as §§ 63-3082 to 63-3087.

63-3084. Tax additional to other income taxes. — The tax imposed by this act shall be in addition to any other income taxes imposed by the laws of this state. [1959, ch. 303, § 3, p. 654.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3083.

63-3085. Date tax due and payable. — The tax herein imposed shall become due and payable to the state tax commission of the state of Idaho on or before the 15th day of April following the close of a calendar year or on or before the fifteenth day of the fourth month following the close of a fiscal year. [1959, ch. 303, § 4, p. 654.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

63-3086. Persons exempt from tax. — This act shall not apply to any person who on the last day of his taxable year is blind or lawfully receiving public assistance payments from the state under title 56, Idaho Code. [1959, ch. 303, § 5, p. 654.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3083.

JUDICIAL DECISIONS

Cited in: State v. Gilbert, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987).

RESEARCH REFERENCES

Am. Jur. — 71 Am. Jur. 2d, State and Local Taxation, § 332.

63-3087. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3038 through 63-3040, 63-3042 through 63-3065A, 63-3071, 63-3075 and 63-3078, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as permanent building fund tax liens and proceedings. [I.C., § 63-3087, as added by 1969, ch. 319, § 24, p. 982; am. 1974, ch. 63, § 1, p. 1141; am. 2007, ch. 10, § 6, p. 10.]

STATUTORY NOTES

Prior Laws. — Former § 63-3087 which comprised S.L. 1959, ch. 303, § 6, p. 654, was repealed by S.L. 1969, ch. 319, § 23.

Amendments. — The 2007 amendment, by ch. 10, deleted "63-3070" following "63-3065A" and inserted "63-3075" following "63-3071."

Compiler's Notes. — The words "this act"

refer to S.L. 1969, Chapter 319, which is codified as § 63-3002, § 63-3004, § 63-3009, § 63-3010, § 63-3013A, § 63-3022, § 63-3024, § 63-3027, § 63-3031, § 63-3033, § 63-3035, § 63-3036, § 63-3045, § 63-3046, § 63-3056, § 63-3073, § 63-3076, § 63-3077, § 63-3083, and § 63-3087.

Effective Dates. — Section 25 of S.L.

1969, ch. 319 declared an emergency, in effect on passage and retroactively to January 1, 1969. Section 2 of S.L. 1974, ch. 63 declared an emergency. Approved March 15, 1974.

63-3088. Designation by individuals. — (a) Every individual whose income tax liability for any taxable year is one dollar (\$1.00) or more under the provisions of chapter 30, title 63, Idaho Code, may designate that one dollar (\$1.00) shall be paid into the election campaign fund established by this act.

(b) For the purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by the Idaho Income Tax Act, reduced by the sum of the credits authorized by that act.

(c) A designation under subsection (a) may be made with respect to any taxable year, in such manner as the state tax commission may prescribe by regulations, at the time of filing the return of the tax imposed by the Idaho Income Tax Act.

(d) The form and manner prescribed by the state tax commission shall include a list of all political parties, as defined in section 34-501, Idaho Code, qualifying as of July 1 of the current tax year, to allow the individual to designate any of such parties to receive the contribution, and allowance for an undesignated contribution to be credited to the general election campaign fund to be distributed as provided by section 34-2503, Idaho Code.

(e) The form and manner prescribed by the state tax commission shall be a conspicuous portion of the principal form provided for purposes of individual taxation. [I.C., § 63-3088, as added by 1975, ch. 132, § 3, p. 290; am. 1978, ch. 94, § 1, p. 180.]

STATUTORY NOTES

Compiler's Notes. — The words "Idaho Income Tax Act" refer to S.L. 1959, ch. 299, as amended. See § 63-3001.

The words "this act" at the end of subsection (a) refer to S.L. 1975, Chapter 132, which is codified as §§ 34-2501 to 34-2503, 34-2505, and 63-3088.

Section 7 of S.L. 1975, ch. 132 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

63-3089. Designation of school districts. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3089, as added by 1981, ch. 58, § 1, p. 87, was repealed by S.L. 1998,

ch. 20, § 2, effective retroactively to January 1, 1998.

CHAPTER 31

ANTICIPATION OF REVENUE BY TAXING DISTRICTS

SECTION.

- 63-3101. Taxing district defined.
63-3102. Authority to borrow money.
63-3103. Sale of revenue anticipation bonds or notes.
63-3104. Creation of fund to pay bonds or notes at maturity — Payment of bonds or notes.
63-3105. Tax levy to cover deficiency in bond or note payments.

SECTION.

- 63-3106. Issuance and sale of refunding bonds or notes by taxing districts to pay for revenue anticipation bonds or notes.
63-3107. Construction.
63-3108. Necessary actions authorized.

63-3101. Taxing district defined. — A taxing district within the meaning of this act is any county, any political subdivision of the state, any municipal corporation, including specially chartered cities, any school districts, including specially chartered school districts, any quasi-municipal corporation, or any other public corporation authorized by law to levy taxes, now or hereafter organized. [1933, ch. 160, § 1, p. 266.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1933, ch. 160, which is compiled as §§ 63-3101 — 63-3108.

JUDICIAL DECISIONS

Anticipation Note Not "School District Bond."

Tax anticipation negotiable note, issued by school district, was not a "school district bond" on which permanent educational funds

could be loaned within Const., Art. 9, § 11, as amended in 1900, permitting such funds to be loaned on school district bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

63-3102. Authority to borrow money. — Any taxing district shall have power from time to time by resolution to borrow money and issue revenue anticipation bonds or notes, bearing interest at such rate as may be determined by the governing board, and maturing not more than one (1) year from the date thereof, for the purpose of providing funds in anticipation of the collection of taxes of the current fiscal year, in anticipation of the distribution of state appropriated funds, and in anticipation of other revenues of any nature, for the year in which said revenue anticipation bonds or notes are issued, exclusive of taxes required to be raised to pay the principal of outstanding bonded indebtedness of the taxing district, the proceeds of such bonds or notes to be used for the purpose for which said taxes are levied or such funds or other revenues are appropriated. The amount authorized to be borrowed by means of such revenue anticipation bonds or notes shall not exceed seventy-five per cent (75%) of the taxes levied for the current fiscal year and not yet collected by said taxing district, seventy-five per cent (75%) of the anticipated distribution from the public school income fund not yet collected for the current fiscal year, and seventy-five per cent (75%) of other revenues anticipated, as shown by the

budget duly adopted by the taxing district and certified in accordance with section 63-804, Idaho Code, and not yet collected for the fiscal year. If the tax levy or budget for any fiscal year has not been completed, then the amount of revenue anticipation bonds or notes issued in anticipation of taxes, state funds, or other revenues to be levied for such fiscal year shall not exceed seventy-five per cent (75%) of the taxes levied or state funds or other revenues received by said taxing district in the previous fiscal year. In determining the amount of revenue anticipation bonds or notes which may be issued, the governing body shall declare in the resolution providing for the issuance of such bonds or notes the amount of taxes levied or state funds or other revenues anticipated for the current fiscal year and the amount of such taxes or state funds or other revenues anticipated not yet collected by said taxing district, or in the event that the tax levy or budget for the fiscal year has not been completed, the governing authority shall declare in the resolution providing for the issuance of such revenue anticipation bonds or notes the amount of taxes levied or state funds or other revenues received by said taxing district in the previous fiscal year. In each instance, taxes raised or to be raised to pay the principal of outstanding bonded indebtedness of the taxing district shall not be included in the amount of taxes or state funds or other revenues anticipated against which such revenue anticipation bonds or notes are authorized to be issued. Such revenue anticipation bonds or notes shall be negotiable instruments, and the full faith, credit and resources of the taxing district shall be pledged for the payment of the same. Such bonds or notes shall be issued in such form and detail as shall be determined by the governing authority of the taxing district by resolution duly adopted. [1933, ch. 160, § 2, p. 266; am. 1980, ch. 61, § 11, p. 118; am. 1986, ch. 33, § 1, p. 104; am. 1988, ch. 116, § 1, p. 212; am. 1996, ch. 322, § 64, p. 1029.]

STATUTORY NOTES

Effective Dates. — Section 14 of S.L. 1980, ch. 61 declared an emergency. Approved March 11, 1980.

Section 73 of S.L. 1996, ch. 322 provided that the act shall be in full force and effect on January 1, 1997.

JUDICIAL DECISIONS

Anticipation Note Not “School District Bond.”

Tax anticipation negotiable note, issued by school district, was not a “school district bond” on which permanent educational funds

could be loaned within Const., Art. 9, § 11, as amended in 1900, permitting such funds to be loaned on school district bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

63-3103. Sale of revenue anticipation bonds or notes. — Such revenue anticipation bonds or notes may be sold at public or private sale at such times, in such amounts and on such terms as may be determined by the governing body. [1933, ch. 160, § 3, p. 266; am. 1988, ch. 116, § 2, p. 212.]

63-3104. Creation of fund to pay bonds or notes at maturity — Payment of bonds or notes. — To provide for the payment of said revenue anticipation bonds or notes at maturity, there shall be created by the

resolution providing for the issuance of said revenue anticipation bonds or notes a special fund to be known as the "Revenue Anticipation Bond or Note Redemption Fund." Whenever any revenue anticipation bonds or notes have been issued in anticipation of the collection of taxes, or of state appropriated funds or other revenues, all such moneys thereafter collected or received, the collection of which has been so anticipated, shall be placed in the "Revenue Anticipation Bond or Note Redemption Fund" until such time as the funds accumulated therein shall be sufficient to pay all such revenue anticipation bonds or notes outstanding, together with interest thereon at maturity, and the funds so accumulated in the "Revenue Anticipation Bond or Note Redemption Fund" are hereby appropriated and set apart for such purpose only, and shall be used for no other purpose; provided, however, that nothing in this section shall be construed to limit the payment of the principal of and interest on said revenue anticipation bonds or notes solely to the taxes or other funds or revenues, in anticipation of which said bonds or notes were issued, but such bonds or notes shall be the direct and general obligation of the taxing district. [1933, ch. 160, § 4, p. 266; am. 1986, ch. 33, § 2, p. 104; am. 1988, ch. 116, § 3, p. 212.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1986, ch. 33 declared an emergency. Approved February 11, 1986.

63-3105. Tax levy to cover deficiency in bond or note payments.

— In the event that the taxes collected for any fiscal year prior to date on which final installment of such taxes becomes delinquent, or other anticipated funds or revenues, shall not be sufficient to pay the revenue anticipation bonds or notes issued in anticipation of the collection of taxes or other funds or revenues of such fiscal year, the taxing district shall, in providing for the levy of taxes for the succeeding fiscal year, include in such tax levy for the succeeding fiscal year the amount necessary to cover such deficiency in the collection of such taxes or other funds or revenues, such levy in the succeeding year to be in an amount which, together with the amount of taxes then in such "Revenue Anticipation Bond or Note Redemption Fund" shall be sufficient to provide for the payment of principal of and interest on the revenue anticipation bonds or notes issued in anticipation of such taxes, funds, or other revenues and payable out of such fund. [1933, ch. 160, § 5, p. 266; am. 1988, ch. 116, § 4, p. 212.]

JUDICIAL DECISIONS

Anticipation Note Not "School District Bond."

Tax anticipation negotiable note, issued by school district, was not a "school district bond" on which permanent educational funds

could be loaned within Const., Art. 9, § 11, as amended in 1900, permitting such funds to be loaned on school district bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

63-3106. Issuance and sale of refunding bonds or notes by taxing districts to pay for revenue anticipation bonds or notes. — A taxing district shall have power to issue refunding bonds or notes, with like limitations upon interest and maturity, and shall issue refunding bonds or notes where such refunding bonds or notes shall be necessary to provide for the payment of any revenue anticipation bonds or notes at maturity, or to provide for the payment of any revenue anticipation notes or bonds heretofore issued by any taxing district where such revenue anticipation notes or bonds are outstanding and unpaid after their maturity date. Said refunding bonds or notes shall be authorized by resolution and shall be issued, sold and paid as herein provided for the issuance, sale and payment of revenue anticipation bonds or notes. At no time shall the total amount outstanding of such revenue anticipation bonds or notes and such refunding bonds or notes exceed seventy-five per cent (75%) of the amount of taxes levied or state funds or other revenues anticipated for the current fiscal year and not yet collected by said taxing district, or if such refunding bonds or notes are issued before the tax levy or budget for any fiscal year has been completed, then the total amount outstanding of such revenue anticipation bonds or notes and such refunding bonds or notes shall not exceed seventy-five per cent (75%) of the amount of taxes levied or state funds or other revenues received by said taxing district in the previous fiscal year; provided that where refunding bonds or notes have been issued or the issuance thereof has been provided for by the adoption of a resolution for the purpose of refunding any revenue anticipation bonds or notes, the said revenue anticipation bonds or notes to be refunded by said refunding bonds or notes shall not be included in determining the total amount of revenue anticipation bonds and notes outstanding, but for that purpose shall be treated as having been refunded and retired by such refunding bonds or notes. [1933, ch. 160, § 6, p. 266; am. 1988, ch. 116, § 5, p. 212.]

JUDICIAL DECISIONS

Anticipation Note Not “School District Bond.”

Tax anticipation negotiable note, issued by school district, was not a “school district bond” on which permanent educational funds

could be loaned within Const., Art. 9, § 11, as amended in 1900, permitting such funds to be loaned on school district bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

63-3107. Construction. — This act shall be construed as full authority for the issuance of such revenue anticipation bonds or notes, and it shall not be necessary to comply with the requirements or provisions of any other statute relative to the issuance or sale of bonds or notes of any taxing district, in connection with the issuance of revenue anticipation bonds or notes issued under the authority of this act. [1933, ch. 160, § 7, p. 266; am. 1988, ch. 116, § 6, p. 212.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act” see Compiler’s Notes, § 63-3101.

Effective Dates. — Section 7 of S.L. 1988,

ch. 116 declared an emergency. Approved March 22, 1988.

63-3108. Necessary actions authorized. — In order to carry out the provisions of this act, all necessary actions are hereby authorized and directed. [1933, ch. 160, § 8, p. 266.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3101.

Section 9 of S.L. 1933, ch. 160, read: "Chapter 25 of Title 61 of the Idaho Code Annotated and all acts or parts of acts in conflict with this act or any part thereof are hereby repealed; provided, that as to moneys borrowed and/or notes issued under the provisions of

said chapter so repealed prior to the effective date of this act, and the payment of such moneys and/or notes, and the raising of revenue therefor, said chapter shall be continued in full force and effect."

Effective Dates. — Section 10 of S.L. 1933, ch. 160 declared an emergency. Approved March 11, 1933.

JUDICIAL DECISIONS

Anticipation Note Not "School District Bond."

Tax anticipation negotiable note, issued by school district, was not a "school district bond" on which permanent educational funds

could be loaned within Const., Art. 9, § 11, as amended in 1900, permitting such funds to be loaned on school district bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

CHAPTER 32

ANTICIPATION OF REVENUE BY STATE

SECTION.

63-3201. Borrowing of money in anticipation of income or revenue — Limit of borrowing — Issuance of notes.

63-3202. Procedure for issuance of notes.

SECTION.

63-3203. Tax anticipation note redemption fund.

63-3204. Expenses of negotiating loan and issuing notes.

63-3205, 63-3206. [Repealed.]

63-3201. Borrowing of money in anticipation of income or revenue — Limit of borrowing — Issuance of notes. — The state treasurer, on approval of the state board of examiners, is hereby authorized and directed to borrow money from time to time for the state of Idaho, in anticipation of income or revenue from taxes, whether such taxes are specific, ad valorem, excise, income, franchise or license, for the current fiscal year, or that portion of such taxes not collected or previously anticipated at the time of borrowing, in a principal sum not greater than seventy-five per cent (75%) of income or revenue from such taxes which the state tax commission or any other tax collection agency certifies to the state treasurer are to be reasonably anticipated to be collected during the current fiscal year. [The] the provision of section 67-1212, Idaho Code, shall not limit the authority of the state treasurer to issue and sell tax anticipation notes under the authority of this chapter. Said loan shall be evidenced by the issuance and sale of tax anticipation notes of the state of Idaho, for fixed periods, not greater than twelve (12) months or the end of the current fiscal year, whichever is shorter. [I.C., § 63-3201, as added by 1983, ch. 102, § 2, p. 219.]

STATUTORY NOTES

Prior Laws. — Former §§ 63-3201 — 63-3204, which comprised (1923, ch. 91, §§ 1 — 4, p. 106; I.C.A., §§ 61-2601 — 61-2604; am. 1933 (E.S.), ch. 6, § 1, p. 11; am. 1951, ch. 35, § 1, p. 46; am. 1957, ch. 172, §§ 1 — 4, p. 308; am. 1980, ch. 61, §§ 12, 13, p. 118), were repealed by S.L. 1983, ch. 102, § 1.

Compiler's Notes. — The bracketed word "The" at the beginning of the second sentence

was inserted by the compiler.

Section 1 of S.L. 1983, ch. 102 read: "That Chapter 32, Title 63, Idaho Code, be, and the same is hereby repealed, except that such repeal shall not adversely affect in any way the rights of the holders of any tax anticipation notes of the state which are outstanding on the effective date of this act."

63-3202. Procedure for issuance of notes. — (1) Whenever the state treasurer shall deem it to the best interests of the state of Idaho to issue state of Idaho tax anticipation notes, as provided in section 63-3201, Idaho Code, the state treasurer shall make written application to the state board of examiners, stating the amount of state of Idaho tax anticipation notes the state treasurer deems advisable to issue. Upon approval of the state board of examiners by order or resolution duly entered on the minutes of the state board of examiners, the state treasurer shall issue the tax anticipation notes in accordance with the provisions of this chapter.

(2) Prior to the public issuance and public sale of any tax anticipation note, the state treasurer shall prepare a written plan of financing which shall be filed in the office of the governor. The plan of financing shall provide for the terms and conditions under which the tax anticipation notes shall be issued, sold and delivered, the taxes to be anticipated, the maximum amount of tax anticipation notes which may be outstanding at any one time under the plan of financing, the sources of payment of the tax anticipation notes issued pursuant to the plan of financing, which may include the proceeds of sale of notes issued to refund outstanding tax anticipation notes and to pay accrued interest thereon, and all other details necessary in connection with the issuance, sale and delivery of the tax anticipation notes. The plan of financing shall specify a method pursuant to which the interest rate or rates on the tax anticipation notes may be determined during the time the tax anticipation notes are outstanding and shall also set forth the maximum interest rate which the tax anticipation notes may bear.

(3) The tax anticipation notes shall bear interest, shall be in the form, shall be executed in the manner, shall be payable, shall be sold in the manner and at prices, either at, in excess of, or below the face value thereof, and generally shall be issued in the manner and with the details as shall be set forth in an order of the state treasurer, all in conformity with any applicable plan of financing and with this chapter.

(4) Each tax anticipation note shall recite that it is a valid and binding obligation of the state of Idaho and that the faith and credit of the state of Idaho is solemnly pledged for the payment of the principal of and interest thereon in accordance with its terms and the constitution and laws of the state of Idaho.

(5) Each tax anticipation note shall be recorded in the office of the state controller.

(6) Immediately upon the completion of any sale, the state treasurer shall make a verified return of said sale to the state controller, specifying the

amount of notes sold, the person or persons to whom said notes were sold and the price, terms and conditions of the sale. Immediately upon the sale of any tax anticipation notes, the state treasurer shall credit the proceeds of sale, other than accrued interest, to the general fund of the state. [I.C., § 63-3202, as added by 1983, ch. 102, § 2, p. 219; am. 1994, ch. 180, § 157, p. 420; am. 2003, ch. 32, § 33, p. 115.]

STATUTORY NOTES

Prior Laws. — Former § 63-3202 was repealed. See Prior Laws, § 63-3201.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho

changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 157 of S.L. 1994, ch. 180 became effective January 2, 1995.

63-3203. Tax anticipation note redemption fund. — To provide for the payment of the principal of and interest on tax anticipation notes there is hereby created a special fund to be known as the "Tax Anticipation Note Redemption Fund." Whenever any tax anticipation notes have been issued in anticipation of income or revenue from taxes as authorized and directed by this chapter, all income or revenue realized from the taxes which were specified in the approved plan of financing to be anticipated shall be placed in the tax anticipation note redemption fund until such time as the funds accumulated therein shall be sufficient to pay the principal amount of all such notes outstanding, together with interest thereon until paid; and the funds so accumulated in the redemption fund are hereby appropriated and set aside solely for such purposes; provided, however, except as otherwise provided in the constitution of the state of Idaho nothing in this chapter shall be construed to limit the payment of the principal and interest of tax anticipation notes solely to the income and revenues from the specific taxes in anticipation of which the notes were issued. Accrued interest received upon the sale of the tax anticipation notes shall be deposited by the state treasurer in the redemption fund. The state treasurer is authorized to invest all moneys from time to time in the redemption fund in any authorized investment of the state treasurer maturing at a time or times which will permit payment of the principal of and interest on the tax anticipation notes in a timely manner when due. The state treasurer is authorized to covenant with the purchasers of the tax anticipation notes as to the manner of holding moneys in the redemption fund, the investments of moneys in the redemption fund and the disposition of any investment income therefrom either by retaining investment income in the redemption fund to be used to pay principal of and interest on tax anticipation notes when due or by paying the investment income to the state treasurer for deposit into the general account in the operating fund of the state; provided, however, whenever there is sufficient money in the redemption fund to pay all principal of and interest on all outstanding tax anticipation notes payable therefrom, all investment income thereon must be paid to the state treasurer for deposit into the general account in the state operating fund of the state. [I.C., § 63-3203, as added by 1983, ch. 102, § 2, p. 219.]

STATUTORY NOTES

Prior Laws. — Former § 63-3203 was repealed. See Prior Laws, § 63-3201.

63-3204. Expenses of negotiating loan and issuing notes. — Any and all expenses incident to the issuance of tax anticipation notes authorized and directed by this chapter, shall be paid from the proceeds of sale of the tax anticipation notes credited to the general account in the state operating fund of the state and there is hereby appropriated all sums necessary for the payment of the expenses of issuance when due. [I.C., § 63-3204, as added by 1983, ch. 102, § 2, p. 219.]

STATUTORY NOTES

Prior Laws. — Former § 63-3204 was repealed. See Prior Laws, § 63-3201.

Compiler's Notes. — Section 3 of S.L. 1983, ch. 102 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

Effective Dates. — Section 4 of S.L. 1983, ch. 102 declared an emergency. Approved March 29, 1983.

63-3205. Expenses of negotiating loan and issuing notes. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1923, ch. 91, § 5, p. 106; I.C.A., § 61-2605; am. 1957, ch. 172, § 5, p. 308, was repealed by § 1 of S.L. 1983, ch. 102, effective March 29, 1983.

Section 1 of S.L. 1983, ch. 102, read: "That Chapter 32, Title 63, Idaho Code, be, and the same is hereby repealed, except that such repeal shall not adversely affect in any way

the rights of the holders of any tax anticipation notes of the state which are outstanding on the effective date of this act."

Prior to its repeal such section was amended by § 1 of ch. 1 of S.L. 1983, effective retroactive to July 1, 1982, but the amendment was not given effect because the repeal by S.L. 1983, ch. 102, § 1.

63-3206. Necessary actions authorized. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised (1923, ch. 91, § 6, p. 106; I.C.A., § 61-2606), were repealed by S.L. 1983, ch. 102, § 1.

Section 1 of S.L. 1983, ch. 102, read: "That Chapter 32, Title 63, Idaho Code, be, and the

same is hereby repealed, except that such repeal shall not adversely affect in any way the rights of the holders of any tax anticipation notes of the state which are outstanding on the effective date of this act."

CHAPTER 33

ANTICIPATION OF REVENUE BY COUNTIES

SECTION.

63-3301 — 63-3304. [Repealed.]

63-3301 — 63-3304. Anticipation of revenue by counties. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter, which repealed by S.L. 1989, ch. 100, § 12, effective comprised 1933, ch. 20, §§ 1-4, p. 26 was January 1, 1990.

CHAPTER 34

COLLECTION OF TAXES AND LICENSE FEES

SECTION.

63-3401 — 63-3407. [Repealed.]
63-3408. Suit by attorney general — Certificate of secretary of state.

SECTION.

63-3409. Suits by attorney general on behalf of other states.

63-3401. Statement of policy. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which repealed by S.L. 1998, ch. 53, § 2, effective comprised 1949, ch. 258, § 1, p. 519, was July 1, 1998.

63-3402. Office of tax collector created. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, comprising S.L. 1949, ch. 258, § 2, p. 519, creating the office of tax collector, was repealed by S.L. 1967, ch. 125, § 12.

63-3402a — 63-3404. Office of state tax collector abolished — Powers and duties transferred to state tax commission — Collection of taxes — Accounting and reports. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 1998, ch. 53, § 2, effective July 1, 1998:
§ 63-3402a, which comprised 1967, ch. 125, § 7, p. 284; am. 1996, ch. 322, § 65, p. 1029.
§ 63-3403, which comprised 1949, ch. 258, § 3, p. 519; am. 1974, ch. 19, § 10, p. 524.
§ 63-3404, which comprised 1949, ch. 258, § 4, p. 519; am. 1967, ch. 125, § 8, p. 284; am. 1994, ch. 180, § 158, p. 420.

63-3405. Duties of tax collector. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, comprising S.L. 1949, ch. 258, § 5, p. 519, concerning the duties of the tax collector, was repealed by S.L. 1967, ch. 125, § 12.

63-3406. Act not to affect accrued rights or proceedings in progress. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1949, ch. 258, § 6, p. 519, was repealed by S.L. 1998, ch. 53, § 2, effective July 1, 1998.

63-3407. Declaration of intent. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, comprising S.L. 1949, ch. 258, § 9, p. 519, concerning centralized responsibility in the office of the tax collector, was repealed by S.L. 1967, ch. 125, § 12.

63-3408. Suit by attorney general — Certificate of secretary of state. — The attorney general or an appropriate official of any political subdivision of this state may bring suits in the courts of other states to collect taxes legally due this state or any political subdivision thereof. The officials of other states which extend a like comity to this state are empowered to sue for the collection of such taxes in the courts of this state. A certificate by the secretary of state under the Great Seal of the State that such officers have authority to collect the tax is conclusive evidence of such authority. [1963, ch. 32, § 1, p. 175.]

63-3409. Suits by attorney general on behalf of other states. — The attorney general of this state is empowered to sue and collect, for and on behalf of any other political subdivision or state of the United States taxes legally due such political subdivision or state provided that the law of such state contains a reciprocal provision by which that state will enforce and collect taxes due this state or its political subdivision. [1963, ch. 32, § 2, p. 175.]

CHAPTER 35

COOPERATIVE ELECTRICAL ASSOCIATIONS — TAXING GROSS EARNINGS

SECTION.

- 63-3501. Definitions.
- 63-3502. Levy of tax on annual gross electrical earnings.
- 63-3502A. Levy of tax on annual gross natural gas earnings.
- 63-3502B. Levy of tax on wind energy electrical production.
- 63-3503. Filing operators' statement — Allotment and apportionment of tax due from electrical associations by state tax commission.
- 63-3503A. Filing operators' statement — Allotment and apportionment of tax due from natural gas asso-

SECTION.

- ciations by state tax commission.
- 63-3503B. Filing operators' statements — Allotment and apportionment of tax due from producers of electricity by means of wind energy by state tax commission.
- 63-3504. Collection by county treasurer — Penalty and interest imposed when delinquent.
- 63-3505. Taxes a lien on property of association or producer until paid.
- 63-3506. Assessment of nonoperating property by assessor.

63-3501. Definitions. — For the purposes of this chapter:

(a) The term “cooperative electrical association” means any nonprofit, cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering electric power to its members.

(b) The term “cooperative natural gas association” means any nonprofit cooperative association organized and maintained by its members, whether incorporated or unincorporated, for the purpose of transmitting, distributing or delivering natural gas to its members.

(c) The term “cost of power” means the cost of power purchases and generation included in reports to, and in accordance with applicable requirements of, the rural electrification administration, United States department of agriculture, by cooperative electrical associations which are borrowers from the rural electrification administration, and for cooperative electrical associations which are not borrowers from the rural electrification administration, such costs which could have been included by such cooperative electrical associations using equivalent reporting and accounting requirements. The state tax commission shall prescribe necessary rules for the purpose of providing a uniform method of reporting cost of power purchases and generation by cooperative electrical associations, consistent with the reporting and accounting requirements of the rural electrification administration.

(d) The term “cost of gas” means the cost of natural gas purchased by cooperative natural gas associations from wholesale or other suppliers of natural gas for delivery to members of the cooperative natural gas association.

(e) The term “gross electrical earnings” means the gross receipts of a cooperative electrical association from the distribution, delivery and sale of electric power within the state of Idaho, but shall not include any earnings or receipts from the distribution, delivery or sale of electric power consumed in pumping water for irrigation or drainage purposes within the state of Idaho, upon the land of such consumer and for the use and benefit of his own land, and where such consumer has received from the association a refund, rebate, or credit of three and one-half percent (3 1/2%) of the cost to him of the electric power so used and consumed.

(f) The term “gross natural gas earnings” means the gross receipts of a cooperative natural gas association from the distribution, delivery and sale of natural gas within the state of Idaho.

(g) The term “gross wind energy earnings” means the gross receipts of a wind energy generator from the distribution, delivery and sale to a customer for the direct use or resale of electrical energy generated, manufactured or produced by means of wind energy within the state of Idaho.

(h) The term “operating property” means and includes all real estate, fixtures or personal property owned, controlled, operated or managed by such electrical or natural gas association, or producer of electricity by means of wind energy, excluding entities that are regulated by the Idaho public utilities commission as to price, in connection with or to facilitate the generation, transmission, distribution, delivery, or measuring of electric

power, natural gas, or electrical energy generated, manufactured or produced by means of wind energy, excluding entities that are regulated by the Idaho public utilities commission as to price, and all conduits, ducts, or other devices, materials, apparatus or property for containing, holding or carrying conductors used for the transmission, distribution and delivery of electric power, natural gas, or electrical energy generated, manufactured or produced by means of wind energy, excluding entities that are regulated by the Idaho public utilities commission as to price, including construction tools, materials and supplies.

(i) The term “nonoperating property” means all other property, real or personal, owned, controlled or managed by such electrical or natural gas association.

(j) The term “taxing unit” shall include any of the following that had property taxes levied in the prior year: the separate taxing districts of the county as well as the county itself and any such taxing district’s fund having a different geographical boundary than such taxing district itself.

(k) The term “tax levy” means the total tax levies fixed by each taxing district, as defined herein, in the prior calendar year.

(l) The term “WPPSS 4 and 5 costs” means, for a cooperative electrical association which is a participant under the Washington public power supply system nuclear projects numbers 4 and 5 participants’ agreement, dated July 14, 1976, all of its costs in connection with Washington public power supply system nuclear projects numbers 4 and 5.

(m) The term “weighted wire mileage factor” means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of wire miles of transmission and distribution lines of such cooperative electrical association situated in such taxing unit.

(n) The term “gas line mileage factor” means a figure which is arrived at by multiplying the tax levy of each taxing unit by the number of miles of natural gas transmission and distribution lines of such cooperative natural gas association situated in such taxing unit. [1959, ch. 237, § 1, p. 507; am. 1961, ch. 301, § 1, p. 560; am. 1983, ch. 164, § 1, p. 469; am. 1998, ch. 132, § 1, p. 486; am. 2007, ch. 143, § 1, p. 415.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 143, in the introductory language, substituted “chapter” for “act”; in the last sentence in subsection (c), deleted “and regulations” following “rules”; added subsection (g) and made related redesignations; in subsection (h), inserted “or producer of electricity by means of wind energy, excluding entities that are regulated by the Idaho public utilities commission as to price,” deleted “or to be used” following “conductors used,” and twice inserted “or electrical energy generated, manufactured or produced by means of wind energy, excluding entities that are regulated by

the Idaho public utilities commission as to price”; in subsection (j), inserted “any of the following that had property taxes levied in the prior year” and “and any such taxing district’s fund having a different geographical boundary than such taxing district itself”; and in subsection (k), substituted “prior calendar year” for “year next preceding.”

Effective Dates. — Section 9 of S.L. 1998, ch. 132 provides that this act shall be in full force and effect on and after January 1, 1999.

Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-3502. Levy of tax on annual gross electrical earnings. — There shall be levied against every cooperative electrical association in this state a tax of three and one-half percent (3 1/2%) of its annual gross earnings, after first reducing such gross earnings by its cost of power and WPPSS 4 and 5 costs in such sum as the amount of its gross earnings bear to its gross receipts from the distribution, delivery and sale of electric power within the state of Idaho. This tax shall be in lieu of all other taxes on the operating property of such association for the tax year next preceding the filing of the statement hereinafter provided for, and which shall be paid in the manner and at the time prescribed herein. [1959, ch. 237, § 2, p. 507; am. 1983, ch. 164, § 2, p. 469; am. 1998, ch. 132, § 2, p. 486.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1983, ch. 164 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to January 1, 1983. Approved April 8, 1983.

Section 9 of S.L. 1998, ch. 132 provides that this act shall be in full force and effect on and after January 1, 1999.

RESEARCH REFERENCES

C.J.S. — 84 C.J.S., Taxation, § 159.

63-3502A. Levy of tax on annual gross natural gas earnings. — There shall be levied against every cooperative natural gas association in this state a tax of three and one-half percent (3 1/2%) of its annual gross earnings, after first reducing such gross earnings by its cost of natural gas. This tax shall be in lieu of all other taxes on the operating property of such association of the tax year next preceding the filing of the statement hereinafter provided for, and which shall be paid in the manner and at the time prescribed herein. [I.C., § 63-3502A, as added by 1998, ch. 132, § 3, p. 486.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1998, ch. 132, provides that this act shall be in full force and effect on January 1, 1999.

63-3502B. Levy of tax on wind energy electrical production. — There shall be levied against every producer of electricity by means of wind energy a wind energy tax equal to three percent (3%) of such producer's gross wind energy earnings. This wind energy tax shall be in lieu of all other taxes on the operating property, as defined in section 63-3501(h), Idaho Code, of such wind energy producer. [I.C., § 63-3502B, as added by 2007, ch. 143, § 2, p. 415.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively

to January 1, 2007 and approved March 21, 2007.

63-3503. Filing operators' statement — Allotment and apportionment of tax due from electrical associations by state tax commission. — Every cooperative electrical association in this state shall file with the state tax commission of the state of Idaho the operators' statement provided for in section 63-404, Idaho Code, and shall include thereon a statement of the amount of its gross earnings for the calendar year next preceding. Upon examining and verifying said statement the state tax commission shall compute the amount of the tax measured by the gross earnings and shall allot to each county in which the operating property of such association is situate that proportion of the total tax of such association shown to be due as the number of wire miles of transmission and distribution lines of such association situate in such county bears to the total wire miles of transmission and distribution lines of such association. The state tax commission shall then, for each county, apportion the tax so allotted to the county among the several taxing units thereof within which any operating property of such association is situate, by apportioning to each such taxing unit that proportion of the tax so allotted to the county as the weighted wire mileage factor for each such taxing unit bears to the total of the weighted wire mileage factors of all such taxing units in the county, and shall immediately notify the state superintendent of public instruction and the county treasurer of such allotment and apportionment and the amounts thereof. [1959, ch. 237, § 3, p. 507; am. 1961, ch. 301, § 2, p. 560; am. 1994, ch. 316, § 4, p. 1008; am. 1996, ch. 322, § 66, p. 1029; am. 1998, ch. 132, § 4, p. 486.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1961, ch. 301 declared an emergency. Approved March 14, 1961.

Section 73 of S.L. 1996, ch. 322 provided that the act shall be in full force and effect on January 1, 1997.

Section 9 of S.L. 1998, ch. 132 provides that this act shall be in full force and effect on and after January 1, 1999.

63-3503A. Filing operators' statement — Allotment and apportionment of tax due from natural gas associations by state tax commission. — Every cooperative natural gas association in this state shall file with the state tax commission of the state of Idaho the operators' statement provided for in section 63-404, Idaho Code, and shall include thereon a statement of the amount of its gross earnings for the calendar year next preceding. Upon examining and verifying said statement the state tax commission shall compute the amount of the tax measured by the gross earnings and shall allot to each county in which the operating property of such association is situate that proportion of the total tax of such association shown to be due as the number of gas line miles of transmission and distribution lines of such association situate in such county bears to the total wire miles of transmission and distribution lines of such association. The state tax commission shall then, for each county, apportion the tax so allotted to the county among the several taxing units thereof within which any operating property of such association is situate, by apportioning to

each such taxing unit that proportion of the tax so allotted to the county as the gas line mileage factor for each such taxing unit bears to the total of the gas line mileage factors of all such taxing units in the county, and shall immediately notify the state superintendent of public instruction and the county treasurer of such allotment and apportionment and the amounts thereof. [I.C., § 63-3503A, as added by 1998, ch. 132, § 5, p. 486.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1998, ch. 132 provides that this act shall be in full force and effect on and after January 1, 1999.

63-3503B. Filing operators' statements — Allotment and apportionment of tax due from producers of electricity by means of wind energy by state tax commission. — Every producer of electricity by means of wind energy in this state shall file with the state tax commission of the state of Idaho an operator's statement in the manner as provided for in section 63-404, Idaho Code, and shall include thereon a statement of the prior calendar year's gross wind energy earnings. Upon examining and verifying said statement, the state tax commission shall compute the amount of the wind energy tax based on the gross wind energy earnings and shall allot to each county in which the operating property of such producer is situate that proportion of the total wind energy tax of such producer shown to be due as the same proportion that the total original cost of operating property situate in such county bears to the total original cost of operating property of such producer for the wind energy project. The state tax commission shall then, for each county, apportion the wind energy tax so allotted to such county among the several taxing units thereof within which any operating property of such producer is situate, by apportioning to each such taxing unit that proportion of the wind energy tax so allotted to such county. For such apportionment, the state tax commission shall calculate the weighted original cost which shall be the product of the original cost of such operating property within such taxing unit times such taxing unit's property tax levy for the prior year and the weighted apportionment rate which shall be the ratio of the wind energy tax, allotted to such county, to the aggregate weighted original cost for all such taxing units within which the operating property is located and then shall calculate the apportionment of the wind energy tax for each such taxing unit to be equal to the product of the weighted original cost times the weighted apportionment rate. The state tax commission shall, on or before the second Monday in August, notify the state superintendent of public instruction, the county auditor, and the county treasurer of such allotment and apportionment and the amounts thereof. On or before the third Monday in August, the county auditor shall notify the appropriate taxing units of the amount of wind energy tax being apportioned. [I.C., § 63-3503B, as added by 2007, ch. 143, § 3, p. 415.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-3504. Collection by county treasurer — Penalty and interest imposed when delinquent. — Upon receipt of the notification of the allotment and apportionment of such taxes by the state tax commission by the county treasurer, said county treasurer shall, not later than June 15 of each year, notify each cooperative electrical association, natural gas cooperative, and producer of electricity by means of wind energy, of the amount of taxes owed, and the apportionment thereof to the county and to the several taxing districts in the county and such tax shall be due and payable not later than July 1, following and, upon the payment thereof, the county treasurer shall pay over to each taxing district its apportionment as herein determined. Any such taxes not paid by July 1, as aforesaid, shall become delinquent and a penalty of five percent (5%) thereof shall be imposed, together with interest at the rate of one percent (1%) per month from July 1 until paid. [1959, ch. 237, § 4, p. 507; am. 1998, ch. 132, § 6, p. 486; am. 2007, ch. 143, § 4, p. 415.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 143, near the middle, deleted “and each” preceding “natural gas cooperative” and inserted “and producer of electricity by means of wind energy.”

Effective Dates. — Section 9 of S.L. 1998,

ch. 132 provides that this act shall be in full force and effective on and after January 1, 1999.

Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-3505. Taxes a lien on property of association or producer until paid. — All taxes due and payable under this chapter shall be a lien on all property, real and personal, of the electrical, or natural gas association, or the producer of electricity by means of wind energy, owing the same, as of June 15 of each year and shall be discharged only by the payment thereof. In any action to enforce payment of any delinquent taxes due under this chapter, the county prosecuting such action shall be entitled to a judgment for the reasonable costs of prosecuting such action, as well as for the delinquent taxes, penalty and interest. [1959, ch. 237, § 5, p. 507; am. 1998, ch. 132, § 7, p. 486; am. 2007, ch. 143, § 5, p. 415.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 143, twice substituted “chapter” for “act” and inserted “or the producer of electricity by means of wind energy.”

Effective Dates. — Section 9 of S.L. 1998,

ch. 132 provides that this act shall be in full force and effect on and after January 1, 1999.

Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

63-3506. Assessment of nonoperating property by assessor. — The nonoperating property of any cooperative electrical or natural gas association, or producer of electricity by means of wind energy, shall be assessed by

the county assessor of the county wherein such property is situate, and taxes levied against the same shall be a lien, and shall be due and payable, in the same manner as are any other taxes on property. [1959, ch. 237, § 6, p. 507; am. 1998, ch. 132, § 8, p. 486; am. 2007, ch. 143, § 6, p. 415.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 143, inserted “or producer of electricity by means of wind energy.”

Effective Dates. — Section 7 of S.L. 1959, ch. 237 provided that this act should take effect on and after January 1, 1959.

Section 9 of S.L. 1998, ch. 132 provided this act shall be in full force and effect on and after January 1, 1999. ~

Section 8 of S.L. 2007, ch. 143 declared an emergency retroactively to January 1, 2007 and approved March 21, 2007.

CHAPTER 36

SALES TAX

SECTION.

- 63-3601. Title of act.
- 63-3602. Definitions.
- 63-3603. Farming.
- 63-3604. In this state — In the state.
- 63-3605. Includes and including.
- 63-3605A. Logging.
- 63-3605B. Mining.
- 63-3606. New manufactured home.
- 63-3606A. Modular building.
- 63-3606B. Motor vehicle.
- 63-3607. Person.
- 63-3608. Purchase.
- 63-3609. Retail sale — Sale at retail.
- 63-3610. Retailer.
- 63-3611. Retailer engaged in business in this state.
- 63-3612. Sale.
- 63-3612A. [Repealed.] *
- 63-3613. Sales price.
- 63-3614. Seller.
- 63-3615. Storage — Use.
- 63-3616. Tangible personal property.
- 63-3617. [Repealed.]
- 63-3618. Taxpayer.
- 63-3619. Imposition and rate of the sales tax.
- 63-3620. Permits — Issuance — Revocation — Penalties.
- 63-3620A. Revocation, suspension or expiration of permits held by persons not actively engaged in business.
- 63-3620B. Agreements to collect and remit sales tax.
- 63-3620C. Promoter sponsored events.
- 63-3621. Imposition and rate of the use tax — Exemptions.
- 63-3621A. Use tax on transient equipment.
- 63-3622. Exemptions — Exemption and resale certificates — Penalties.
- 63-3622A. Prohibited taxes.
- 63-3622B. Out-of-state contracts.
- 63-3622C. Motor fuels subject to tax.

SECTION.

- 63-3622D. Production exemption.
- 63-3622E. Containers.
- 63-3622F. Utilities.
- 63-3622G. Heating materials.
- 63-3622H. [Repealed.]
- 63-3622I. Literature.
- 63-3622J. School, church and senior citizen meals.
- 63-3622K. Occasional sales.
- 63-3622L. De minimis sales.
- 63-3622M. Liquor sales.
- 63-3622N. Prescriptions.
- 63-3622O. Exempt private and public organizations.
- 63-3622P. Purchases shipped out-of-state by a common carrier.
- 63-3622Q. Out-of-state shipments.
- 63-3622R. Motor vehicles, used manufactured homes, vessels, all-terrain vehicles, trailers, off-road motorcycles, snowmobiles and glider kits.
- 63-3622S. Radio and television broadcasting equipment.
- 63-3622T. Equipment to produce certain newspapers.
- 63-3622U. Funeral services.
- 63-3622V. Bullion.
- 63-3622W. Irrigation equipment and supplies.
- 63-3622X. Pollution control equipment.
- 63-3622Y. Taxation of aerial passenger tramways and snowgrooming and snowmaking equipment.
- 63-3622Z. Sales by Indian tribes.
- 63-3622AA. Exemption for official documents.
- 63-3622BB. Research and development at the INEEL.
- 63-3622CC. Railroad rolling stock.
- 63-3622DD. Parts for railroad rolling stock.
- 63-3622EE. Purchases for the federal special

SECTION.

- supplemental food program for women, infants and children (WIC).
- 63-3622FF. Purchases made with federal food stamps.
- 63-3622GG. Aircraft.
- 63-3622HH. Production exemption shall not apply to sales regarding recreation-related vehicles.
- 63-3622II. Money-operated dispensing equipment.
- 63-3622JJ. Logging exemption.
- 63-3622KK. Incidental sales by religious corporations or societies.
- 63-3622LL. Media measurement services exemption.
- 63-3622MM. Livestock sold at livestock markets.
- 63-3622NN. Clean rooms.
- 63-3622PP. Idaho commemorative silver medallions.
- 63-3622QQ. Equipment used in alternative method of generation of electricity. [Effective until July 1, 2011.]
- 63-3622RR. Research and development.
- 63-3622SS. Hunting or shooting sports.
- 63-3622TT. Media production project tax re-

SECTION.

- bate. [Effective until July 1, 2011.]
- 63-3623. Returns and payments.
- 63-3623A. Taxes as state money.
- 63-3623B. Amusement devices.
- 63-3624. Administration.
- 63-3625. Security for tax.
- 63-3626. Refunds, limitations, interest.
- 63-3627. Responsibility for taxes.
- 63-3628. Successors' liability.
- 63-3629. Deficiency determinations.
- 63-3630. Jeopardy determinations.
- 63-3631. Redetermination.
- 63-3632. Interest on deficiencies.
- 63-3633. Period of limitation upon assessment and collection.
- 63-3634. Additions and penalties.
- 63-3634A. Authority to enter agreements.
- 63-3635. Collection and enforcement.
- 63-3636, 67-3637. [Repealed.]
- 63-3638. Sales tax — Distribution.
- 63-3638A. Sales tax on liquor to be paid to liquor account.
- 63-3639. [Reserved.]
- 63-3640. Contracts entered into before effective date of increased tax.
- 63-3640A. [Repealed.]
- 63-3641. Tangible personal property sold by certain retailers.

63-3601. Title of act. — This act is known and may be cited as “The Idaho Sales Tax Act.” [1965, ch. 195, § 1, p. 408.]

STATUTORY NOTES

Cross References. — No state ad valorem tax when sales tax is in force, § 63-801.

Ridesharing, exemption, § 49-2436.

Compiler's Notes. — The words “this act” refer to S.L. 1965, Chapter 195, which is compiled as §§ 63-3024, 63-3601 to 63-3605, 63-3606, 63-3607 to 63-3610, 63-3612, 63-3613 to 63-3616, 63-3618 to 63-3620, 63-3621, 63-3623, 63-3624 to 63-3634, 63-3635, and 63-3638.

Section 12 of S.L. 1967, ch. 294 read: “In the event the office of the tax collector is merged

with the state tax commission, determinations, jeopardy determinations, redeterminations, compromises, closing agreements and similar responsibilities required to be performed by the tax collector under the Idaho Income Tax Act and the Idaho Sales Tax Act shall be performed by the member of the state tax commission assigned the duty of supervisor of the division of taxation involved.” The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission.

JUDICIAL DECISIONS

Sales Tax Applicable.

Pursuant to § 63-3612(2)(f), initiation fees, membership dues, assessments and unused dining minimums which non-profit country

club charged its members were subject to state sales tax. *Crane Creek Country Club v. Idaho State Tax Comm'n*, 122 Idaho 880, 841 P.2d 410 (1992).

RESEARCH REFERENCES

Am. Jur. — 68 Am. Jur. 2d, Sales and Use Taxes, §§ 1-289.

A.L.R. — Casual or isolated sales: Exemption of casual, isolated or occasional sales

under sales and use taxes. 42 A.L.R.3d 292.

Automobiles: Sales or use tax on motor vehicle purchased out of state. 45 A.L.R.3d 1270.

Tobacco: Validity, construction and application of state statutes forbidding possession, transportation or sale of unstamped or unlicensed cigarettes or other tobacco products. 46 A.L.R.3d 1342.

Charitable organization: Exemption of charitable or educational organization from

sales or use tax. 53 A.L.R.3d 748.

Religious organization's exemption from sales or use tax. 54 A.L.R.3d 1204.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption. 25 A.L.R.4th 750.

63-3602. Definitions. — When used in this chapter, the terms defined in sections 63-3603 through 63-3618, Idaho Code, shall have the meanings respectively ascribed to them, except as the context or other provisions of this chapter may require. [1965, ch. 195, § 2, p. 408; am. 1991, ch. 321, § 1, p. 833.]

63-3603. Farming. — The terms “farm” and “farming” refer to and mean the business of operating for gain or profit a ranch or farm and include stock, dairy, poultry, fish, fur, fruit and truck farms, ranches, ranges and orchards, and custom farming. [1965, ch. 195, § 3, p. 408; am. 1987, ch. 326, § 1, p. 682.]

63-3604. In this state — In the state. — The terms “in this state” or “in the state” mean within the exterior limits of the state of Idaho and include all territory within these limits owned by or ceded to the United States of America. [1965, ch. 195, § 4, p. 408.]

63-3605. Includes and including. — The terms “includes” and “including” when used in this act shall not be deemed to exclude other things otherwise within the meaning of the term defined. [1965, ch. 195, § 5, p. 408.]

STATUTORY NOTES

Compiler's Notes. — For words “this act” see Compiler's Notes, § 63-3601.

63-3605A. Logging. — The term “logging” means the harvesting of forest trees by cutting, skidding, loading, thinning or decking, regardless of whether the forest trees are owned by the person performing the harvesting when such harvesting is for resale of the product harvested. [I.C., § 63-3605A, as added by 1989, ch. 257, § 1, p. 632; am. 1990, ch. 431, § 1, p. 1195.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1989, ch. 257 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and

after its passage and approval, and retroactively to January 1, 1989.” Approved March 29, 1989.

63-3605B. Mining. — The term “mining” means the extraction from the earth of a mineral as defined in sections 47-701 and 47-701A, Idaho Code, excepting therefrom geothermal resources, and includes the further process-

ing of such mineral. [I.C., § 63-3605B, as added by 1993, ch. 319, § 1, p. 1175.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1993, ch. 319 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to December 11, 1990.” Approved March 31, 1993.

63-3606. New manufactured home. — The term “new manufactured home” means a manufactured home, as defined in section 39-4105, Idaho Code, which is sold for the first time at retail. The term “new manufactured home” includes all components incorporated in such manufactured home at the time of manufacture and remaining unchanged at the time of the original retail sale thereof.

Furniture, fixtures, furnishings, appliances and attachments not incorporated as component parts of the manufactured home at the time of manufacture shall be subject to the sales and use tax separately and distinctly from the sales price of a new manufactured home. Refrigerators, ranges, draperies, and wood burning stoves placed in the manufactured home by the manufacturer shall be deemed to be components incorporated into such manufactured home. [1965, ch. 195, § 6, p. 408; am. 1976, ch. 297, § 1, p. 1025; am. 1986, ch. 30, § 9, p. 84.]

63-3606A. Modular building. — The term “modular building,” as defined in section 39-4301, Idaho Code, is a substantially complete building designed to be affixed to real property. The term “modular building,” includes all components incorporated in such modular building at the time of manufacture and remaining unchanged at the time of the original retail sale. Furniture, fixtures, furnishings, appliances, and attachments not incorporated as component parts of the modular building at the time of manufacture shall be subject to the sales and use tax separately and distinctly from the sales price of a modular building. Refrigerators, ranges, draperies, and wood burning stoves placed in the modular home by the manufacturer shall be deemed to be components incorporated into such modular building. [I.C., § 63-3606A, as added by 1971, ch. 213, § 1, p. 935; am. 1986, ch. 30, § 10, p. 84; am. 1996, ch. 46, § 1, p. 119; am. 2007, ch. 252, § 14, p. 737.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 252, updated the section reference.

63-3606B. Motor vehicle. — The term “motor vehicle” means a vehicle registered or required to be registered for use on public roads. The term “motor vehicle” does not include vehicles not required to be registered pursuant to section 49-426, Idaho Code, or intended for off-road use only, including snowmobiles, boats and aircraft, and all-terrain vehicles and

off-road motorcycles when not used on public roads. [I.C., § 63-3606B, as added by 1999, ch. 42, § 1, p. 84.]

63-3607. Person. — The term “person” includes any individual, firm, copartnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit. [1965, ch. 195, § 7, p. 408.]

63-3608. Purchase. — The term “purchase” means any transfer, rental, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration. A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price is a purchase. A transfer for a consideration of any publication or of tangible personal property which has been produced, fabricated, or printed to the special order of the customer is also a purchase. [1965, ch. 195, § 8, p. 408.]

63-3609. Retail sale — Sale at retail. — The terms “retail sale” or “sale at retail” means a sale for any purpose other than resale in the regular course of business or lease or rental of property in the regular course of business where such rental or lease is taxable under section 63-3612(h), Idaho Code.

(a) All persons engaged in constructing, altering, repairing or improving real estate, are consumers of the material used by them; all sales to or use by such persons of tangible personal property are taxable whether or not such persons intend resale of the improved property.

(b) For the purpose of this chapter, the sale or purchase of personal property incidental to the sale of real property or used mobile homes is deemed a sale of real property. [1965, ch. 195, § 9, p. 408; am. 1967, ch. 290, § 1, p. 805; am. 1971, ch. 213, § 2, p. 935; am. 1985, ch. 140, § 1, p. 383; am. 1986, ch. 30, § 11, p. 84; am. 1996, ch. 46, § 2, p. 119; am. 1998, ch. 48, § 1, p. 195.]

JUDICIAL DECISIONS

ANALYSIS

Lease of tangible personal property.

Legislative intent.

Multiple listing booklets.

Prefabricated homes.

Real estate constructing.

Sales tax applicable.

Single transaction — Multiple taxation.

Lease of Tangible Personal Property.

Applying the definitional statutes of this act, it is evident that the leasing of pinsetting

equipment by the manufacturer to individual proprietors of bowling establishments does in fact constitute a taxable event. Boise Bowling

Center v. State, 93 Idaho 367, 461 P.2d 262 (1969).

Legislative Intent.

In enacting the production exemption, the legislature did not intend to modify the effect of subsection (a) of this section, which provides that all use of tangible personal property by those who construct, alter, repair or improve real estate is taxable. Potlatch Corp. v. Idaho State Tax Comm'n, 120 Idaho 1, 813 P.2d 340 (1991).

Multiple Listing Booklets.

Since there was no evidence of any agreement between the multiple listing service and the real estate broker regarding transfer of title, title to the multiple listing booklets was transferred to the real estate broker upon delivery. The transfer was "for a consideration"; thus, there was a sale of the multiple listing booklets by the multiple listing service to the real estate broker. This sale was a "sale at retail" since real estate broker had no intention of reselling those books and, in fact, was prohibited from doing so by the bylaws of the multiple listing service. Old W. Realty, Inc. v. Idaho State Tax Comm'n, 110 Idaho 546, 716 P.2d 1318 (1986).

Prefabricated Homes.

The sales tax on prefabricated homes was based on the value of materials used in construction and not on the sale price of the homes themselves, where the manufacturer of prebuilt homes contracted to construct buildings according to customers' specifications, transported the completed homes to the customers' properties, attached the homes to foundations and then transferred title to the customers. Idaho State Tax Comm'n v. Boise Cascade Corp., 97 Idaho 312, 543 P.2d 865 (1975).

Real Estate Constructing.

The purchase of the materials used to construct smokestacks affixed to real estate on large foundations come within the provisions of subsection (a) of this section and were not exempt under subdivision (d) of former § 63-3622 as the stacks were real property. Bunker Hill Co. v. State ex rel. State Tax Comm'n, 111 Idaho 457, 725 P.2d 162 (1986), overruled on other grounds, Idaho State Tax Comm'n v. Haener Bros., 121 Idaho 741, 828 P.2d 304 (1992).

It was clear from the stipulated description of logging road equipment, material and repair parts and trailer mounted water pumps that those items were used to construct, alter, repair or improve real estate logging roads. These items were, therefore, subject to use tax pursuant to subdivision (a) of this section. The production exemption was not intended to affect this result. Potlatch Corp. v. Idaho State Tax Comm'n, 120 Idaho 1, 813 P.2d 340 (1991).

Sales Tax Applicable.

Pursuant to § 63-3612(2)(f), initiation fees, membership dues, assessments and unused dining minimums which non-profit country club charged its members were subject to state sales tax. Crane Creek Country Club v. Idaho State Tax Comm'n, 122 Idaho 880, 841 P.2d 410 (1992).

Single Transaction — Multiple Taxation.

There is no double taxation when two separate and distinct privileges are being taxed, even though the subject matter to which each separate transaction pertains may be identical. Boise Bowling Center v. State, 93 Idaho 367, 461 P.2d 262 (1969).

Cited in: Evans v. Idaho State Tax Comm'n, 95 Idaho 54, 501 P.2d 1054 (1972); State v. Barlow, 113 Idaho 573, 746 P.2d 1032 (Ct. App. 1987).

OPINIONS OF ATTORNEY GENERAL

The City of Sun Valley may impose its local option sales tax on building materials sales made in the city. OAG 91-6.

63-3610. Retailer. — The term "retailer" includes:

(a) Every seller who makes any retail sale or sales of tangible personal property and every person engaged in the business of making retail sales at auction of tangible personal property owned by the person or others.

(b) Every person engaged in the business of making sales for storage, use, or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use, or other consumption.

(c) Every person making more than two (2) retail sales of tangible personal property during any twelve (12) month period, including sales

made in the capacity of assignee for the benefit of creditors, or receiver or trustee in bankruptcy, or every person making fewer sales who holds himself out as engaging in the business of selling such tangible personal property at retail or who sells a motor vehicle.

(d) When the state tax commission determines that it is necessary for the efficient administration of this act to regard any salesmen, representatives, peddlers, or canvassers as agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold by them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the state tax commission may so regard them and may regard the dealers, distributors, supervisors, or employers as retailers for the purpose of this act.

(e) Persons conducting both contracting and retailing activities. Such persons must keep separate accounts for the retail portion of their business and pay tax in the usual fashion on this portion. [1965, ch. 195, § 10, p. 408; am. 1967, ch. 290, § 2, p. 805; am. 1995, ch. 54, § 1, p. 122; am. 1999, ch. 42, § 2, p. 84.]

STATUTORY NOTES

Compiler's Notes. — For words “this act” see Compiler's Notes, § 63-3601.

JUDICIAL DECISIONS

Cited in: Kwik Vend, Inc. v. Koontz, 94 Idaho State Tax Comm'n, 95 Idaho 54, 501 Idaho 166, 483 P.2d 928 (1971); Evans v. P.2d 1054 (1972).

63-3611. Retailer engaged in business in this state. — “Retailer engaged in business in this state” as used in this chapter means any retailer who:

(1) Engages in recurring solicitation of purchases from residents of this state or otherwise purposefully directs its business activities at residents of this state; and

(2) Has sufficient contact with this state, in accordance with the constitution of the United States, to allow the state to require the seller to collect and remit use tax on sales of tangible personal property or services made to customers in this state.

(3) The term includes any of the following:

(a) Any retailer maintaining, occupying or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business or maintaining a stock of goods.

(b) Any retailer having any representative, agent, salesman, canvasser or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing or the taking of orders for any tangible personal property.

- (c) Any retailer, with respect to a lease or rental, deriving rentals from a lease or rental of tangible personal property situated in this state.
- (d) Any retailer engaging in any activity in connection with servicing or installing tangible personal property in this state.
- (e) Any retailer owned or controlled by the same interests which own or control any retailer engaged in business in the same or a similar line of business in this state.
- (f) Any retailer having a franchisee or licensee operating under its trade name if the franchisee or licensee is required to collect the tax under the provisions of this section. [I.C., § 63-3611, as added by 1989, ch. 311, § 2, p. 806; am. 1995, ch. 54, § 2, p. 122; am. 1998, ch. 49, § 1, p. 199.]

STATUTORY NOTES

Prior Laws. — Former § 63-3611 which comprised S.L. 1965, ch. 195, § 11, p. 408 was repealed by section 1 of S.L. 1969, ch. 326.

Effective Dates. — Section 3 of S.L. 1998,

ch. 49, declared an emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 17, 1998.

JUDICIAL DECISIONS

Cited in: *Kwik Vend, Inc. v. Koontz*, 94 Idaho 166, 483 P.2d 928 (1971).

63-3612. Sale. — (1) The term “sale” means any transfer of title, exchange or barter, conditional or otherwise, of tangible personal property for a consideration and shall include any similar transfer of possession found by the state tax commission to be in lieu of, or equivalent to, a transfer of title, exchange or barter.

(2) “Sale” shall also include the following transactions when a consideration is transferred, exchanged or bartered:

(a) Producing, fabricating, processing, printing, or imprinting of tangible personal property for consumers who furnish, either directly or indirectly, the tangible personal property used in the producing, fabricating, processing, printing, or imprinting.

(b) Furnishing, preparing, or serving food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(c) A transfer of possession of property where the seller retains the title as security for the payment of the sales price.

(d) A transfer of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(e) Admission to a place or for an event in Idaho, provided that an organization conducting an exempt function as defined in section 527 or exempted by section 501(c)(3) of the Internal Revenue Code, as incorporated in section 63-3004, Idaho Code, and collecting any charges for attendance at the aforementioned event, shall not have those admission charges be defined as a sale if the event:

- (i) Is not predominately recreational or commercial; and

- (ii) Any included entertainment value is minimal when compared to the charge for attendance; and
- (iii) Such entity has paid sales and use tax on taxable property or services used during the event.
- (f) The use of or the privilege of using tangible personal property or facilities for recreation.
- (g) Providing hotel, motel, campground, or trailer court accommodations, nondepreciable goods directly consumed by customers and included services, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.
- (h) The lease or rental of tangible personal property.
- (i) The intrastate transportation for hire by air of freight or passengers, except (1) as part of a regularly scheduled flight by a certified air carrier, under authority of the United States, or (2) when providing air ambulance services.
- (3) As used in subsections (2)(b) and (2)(g) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar nondisposable property. [1965, ch. 195, § 12, p. 408; am. 1988, ch. 346, § 1, p. 1025; am. 1988, ch. 352, § 1, p. 1052; am. 1993, ch. 26, § 1, p. 87; am. 1997, ch. 62, § 1, p. 121; am. 1999, ch. 204, § 2, p. 550.]

STATUTORY NOTES

Federal References. — Sections 527 and 501 of the Internal Revenue Code, referred to in subdivision (2)(e), are compiled as 26 U.S.C. §§ 527 and 501 respectively.

Compiler's Notes. → The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the

authority of S.L. 1967, ch. 125, § 7.

Effective Dates. — Section 3 of S.L. 1999, ch. 204, reads: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval; and Section 1 of this act shall be in full force and effect on and after July 1, 1999."

JUDICIAL DECISIONS

ANALYSIS

Country club fees.

Leases.

Pager units.

Prefabricated homes.

Sales tax inapplicable.

Single transaction — Multiple taxation.

Ski lift tickets.

Country Club Fees.

Pursuant to subsection (2)(f) of this section, initiation fees, membership dues, assessments and unused dining minimums which non-profit country club charged its members were subject to state sales tax. *Crane Creek Country Club v. Idaho State Tax Comm'n*, 122

Idaho 880, 841 P.2d 410 (1992).

Leases.

Applying the definitional statutes of this act, it is evident that the leasing of pinsetting equipment by the manufacturer to individual proprietors of bowling establishments consti-

tutes a taxable event. *Boise Bowling Center v. State*, 93 Idaho 367, 461 P.2d 262 (1969).

Pager Units.

Pager units supplied by radio paging service were subject to sales tax, as such pagers were not merely incidental to the service transaction, but were a mixed transaction imposing tax liability on the rental portion of the transaction, as the initial agreement between paging service and its customers set forth a separate charge ranging between 25% and 40% of the total monthly charge as a fee for leasing the pager; thus the paging service owed sales tax on rental receipts derived from the transfer of paging units to its customers. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

Prefabricated Homes.

The sales tax on prefabricated homes was based on the value of materials used in construction and not on the sale price of the homes themselves, where the manufacturer of prebuilt homes contracted to construct buildings according to customers' specifications, transported the completed homes to the customers' properties, attached the homes to foundations and then transferred title to the customers. *Idaho State Tax Comm'n v. Boise Cascade Corp.*, 97 Idaho 312, 543 P.2d 865 (1975).

Sales Tax Inapplicable.

The sales tax does not apply to transactions where the rendering of a service is the object of the transaction, even though tangible personal property is exchanged incidentally. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

Single Transaction — Multiple Taxation.

There is no double taxation when two separate and distinct privileges are being taxed, even though the subject matter to which each separate transaction pertains may be identical. *Boise Bowling Center v. State*, 93 Idaho 367, 461 P.2d 262 (1969).

Ski Lift Tickets.

Since owners of a ski area did not charge a fee for entering the ski areas, the charge for lift tickets was not an "admissions charge"

under subdivision (2)(e) of this section. *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 851 P.2d 961 (1993), *aff'd*, 128 Idaho 219, 912 P.2d 106 (1996).

Lift ticket charges are receipts for the use or privilege of using facilities for recreational purposes and are, therefore, taxable under subdivision (2)(f) of this section. *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 851 P.2d 961 (1993), *aff'd*, 128 Idaho 219, 912 P.2d 106 (1996).

In an action challenging the application of local option sales tax ordinances adopted by the cities of Sun Valley and Ketchum to the sale of ski lift tickets sold within those cities, where the ordinances' provisions that imposed a sales tax on the sale of ski tickets specifically referred to receipts received by the vendor of the ski lift tickets and not to a particular activity that would trigger the imposition of such tax, it was at the point of sale that the purchaser obtained the privilege of using the ski lifts and it was the sales transaction, and not the activity of using the ski lifts that was the taxable event; consequently, the receipts collected from sales of ski lift tickets within the cities' geographical boundaries were subject to taxation under the local ordinances and subsection (2)(f) of this section. *City of Sun Valley v. Sinclair Oil Corp.*, 128 Idaho 219, 912 P.2d 106 (1996).

Where the local ordinances' provisions imposing a sales tax on the sale of ski tickets, specifically refer to receipts received by the vendor of the ski lift tickets and do not focus on a specific activity to trigger the taxable event, it is the sales transaction from which the receipt is received and not the activity of using the ski lifts that is the event subject to taxation under subsection (f) of this section and the corresponding local ordinances, and since the taxable event takes place within the jurisdiction and geographical boundaries of the localities, the sales tax ordinances do not violate Const., Art. 12, § 2. *City of Sun Valley v. Sinclair Oil Corp.*, 128 Idaho 219, 912 P.2d 106 (1996).

Cited in: *Old W. Realty, Inc. v. Idaho State Tax Comm'n*, 110 Idaho 546, 716 P.2d 1318 (1986).

OPINIONS OF ATTORNEY GENERAL

County authorities must collect and remit sales tax for photocopies sold by them. OAG 84-2.

The sales tax collected for photocopies sold by county authorities is to be charged in addition to the normal fee charged for such photocopies. OAG 84-2.

A vendor who sells a ski lift ticket from a location within the city limits of the City of

Sun Valley has a responsibility to collect city local option sales tax from the purchaser of the ticket; the tax thus collected must be remitted to the City of Sun Valley in the manner provided in the city's municipal sales tax ordinance. OAG 91-6.

The City of Sun Valley may impose its local option sales tax on building materials sales made in the city; for the sale of goods, a sale is

in the city when title passes either when provided by contract between the parties or, if there is no express contractual provision, when the seller completes his responsibilities regarding delivery of the product sold, but in no case does title pass before identification of specific goods to the sale; when delivery of building materials occurs in the City of Sun

Valley, and there is no specific provision in the sales contract to the contrary, title passes at the time of delivery which is the time of sale; if the seller is a retailer required to have a city sales tax permit, the city may require the seller to collect city sales tax on the sale and remit the tax to the city. OAG 91-6.

63-3612A. Occasional sale. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 63-3612A, as added by 1967, ch. 290, § 3, p. 805; am. 1979, ch. 24,

§ 1, p. 34; am. 1980, ch. 304, § 1, p. 781, was repealed by S.L. 1988, ch. 157, § 1.

63-3613. Sales price. — (a) The term “sales price” means the total amount for which tangible personal property, including services agreed to be rendered as a part of the sale, is sold, rented or leased, valued in money, whether paid in money or otherwise, without any deduction on account of any of the following:

1. The cost of the property sold. However, in accordance with such rules as the state tax commission may prescribe, a deduction may be taken if the retailer has purchased property for some purpose other than resale or rental, has reimbursed his vendor for tax which the vendor is required to pay to the state or has paid the use tax with respect to the property, and has resold or rented the property prior to making any use of the property other than retention, demonstration or display while holding it for sale in the regular course of business. If such a deduction is taken by the retailer, no refund or credit will be allowed to his vendor with respect to the sale of the property.
2. The cost of materials used, labor or service cost, losses, or any other expense.
3. The cost of transportation of the property prior to its sale.
4. The face value of manufacturer's discount coupons. A manufacturer's discount coupon is a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer.

(b) The term “sales price” does not include any of the following:

1. Retailer discounts allowed and taken on sales, but only to the extent that such retailer discounts represent price adjustments as opposed to cash discounts offered only as an inducement for prompt payment.
2. Any sums allowed on merchandise accepted in payment of other merchandise, provided that this allowance shall not apply to the sale of a “new manufactured home” or a “modular building” as defined herein.
3. The amount charged for property returned by customers when the amount charged therefor is refunded either in cash or credit; but this exclusion shall not apply in any instance when the customer, in order to obtain the refund, is required to purchase other property at a price greater than the amount charged for the property that is returned.

4. The amount charged for labor or services rendered in installing or applying the property sold, provided that said amount is stated separately and such separate statement is not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for set up of a manufactured home shall be included in the "sales price" of such manufactured home.

5. The amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer.

6. The amount charged for finance charges, carrying charges, service charges, time-price differential, or interest on deferred payment sales, provided such charges are not used as a means of avoiding imposition of this tax upon the actual sales price of the tangible personal property.

7. Delivery and handling charges for transportation of tangible personal property to the consumer, provided that the transportation is stated separately and the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property; except that charges by a manufactured homes dealer for transportation of a manufactured home shall be included in the "sales price" of such manufactured home.

8. Manufacturers' rebates when used at the time of a retail sale as a down payment on or reduction to the retail sales price of a motor vehicle to which the rebate applies. A manufacturer's rebate is a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer.

9. The amount of any fee imposed upon an outfitter as defined in section 36-2102, Idaho Code, by a governmental entity pursuant to statute for the purpose of conducting outfitting activities on land or water subject to the jurisdiction of the governmental entity, provided that the fee is stated separately and is presented as a use fee paid by the outfitted public to be passed through to the governmental entity.

10. The amount of any discount or other price reduction on telecommunications equipment when offered as an inducement to the consumer to commence or continue telecommunications service, or the amount of any commission or other indirect compensation received by a retailer or seller as a result of the consumer commencing or continuing telecommunications service.

(c) The sales price of a "new manufactured home" or a "modular building" as defined in this act shall be limited to and include only fifty-five percent (55%) of the sales price as otherwise defined herein.

(d) Taxes previously paid on amounts represented by accounts found to be worthless may be credited upon a subsequent payment of the tax provided in this chapter or, if no such tax is due, refunded. If such accounts are thereafter collected, a tax shall be paid upon the amount so collected.

(e) Tangible personal property when sold at retail for more than eleven cents (\$.11) but less than one dollar and one cent (\$1.01) through a vending machine shall be deemed to have sold at a sales price equal to one hundred

seventeen percent (117%) of the price which is paid for such tangible personal property and/or its component parts including packaging by the owner or operator of the vending machines. [1965, ch. 195, § 13, p. 408; am. 1967, ch. 290, § 4, p. 805; am. 1969, ch. 261, § 1, p. 800; am. 1976, ch. 297, § 2, p. 1025; am. 1977, ch. 36, § 1, p. 64; am. 1983, ch. 247, § 1, p. 667; am. 1984, ch. 287, § 1, p. 670; am. 1986, ch. 30, § 12, p. 84; am. 1986, ch. 300, § 1, p. 748; am. 1990, ch. 352, § 1, p. 944; am. 1990, ch. 438, § 1, p. 1206; am. 1994, ch. 111, § 1, p. 244; am. 1996, ch. 46, § 3, p. 119; am. 1996, ch. 433, § 1, p. 1467; am. 1999, ch. 42, § 3, p. 84.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 46, § 3, effective July 1, 1996 and ch. 433, § 1, effective January 1, 1993 — which do not appear to conflict and have been compiled together. The 1996 amendment, by ch. 46 § 3 in subdivision (a)(1) in the second sentence deleted “and regulations” following “such rules”; in subdivision (b)(7) added “Delivery and handling” at the beginning of the subdivision, and substituted “to the consumer, provided that the transportation is stated separately and

the separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the tangible personal property” for “after sale” following “transportation of tangible personal property”. The 1996 amendment, by ch. 433, § 1 in subdivision (a)(1) in the second sentence deleted “and regulations” following “such rules” and added subdivision (b)(10). **Compiler’s Notes.** — The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

Cited in: Old W. Realty, Inc. v. Idaho State Tax Comm’n, 110 Idaho 546, 716 P.2d 1318 (1986).

OPINIONS OF ATTORNEY GENERAL

County authorities must collect and remit sales tax for photocopies sold by them. OAG 84-2.

63-3614. Seller. — The term “seller” means every person making sales at retail or retail sales to a buyer or consumer, whether as agent, broker or principal. [1965, ch. 195, § 14, p. 408; am. 1991, ch. 176, § 1, p. 428; am. 1992, ch. 16, § 1, p. 39.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1991, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1992, except that the state tax commission may take such necessary actions, including the adoption of regulations and the implementation of procedures, prior to January 1, 1992, as are necessary to start to implement the provisions by not later than April 1, 1992.” Approved March 29, 1991.

63-3615. Storage — Use. — (a) The term “storage” includes any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside this state of tangible personal property purchased from a retailer.

(b) The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership or the leasing of that property or the exercise of any right or power over tangible personal property by any person in the performance of a contract, or to fulfill contract or subcontract obligations, whether the title of such property be in the subcontractor, contractor, contractee, subcontractee, or any other person, or whether the titleholder of such property would be subject to the sales or use tax, unless such property would be exempt to the titleholder under section 63-3622D, Idaho Code, except that the term "use" does not include the sale of that property in the regular course of business.

(c) "Storage" and "use" do not include the keeping, retaining, or exercising of any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property to be transported outside the state, and thereafter used solely outside the state. [1965, ch. 195, § 15, p. 408; am. 1967, ch. 290, § 5, p. 805; am. 1969, ch. 261, § 2, p. 800; am. 1971, ch. 55, § 1, p. 127; am. 1984, ch. 239, § 27, p. 570; am. 1985, ch. 256, § 2, p. 710; am. 1991, ch. 2, § 4, p. 13; am. 1991, ch. 321, § 2, p. 833; am. 1994, ch. 376, § 1, p. 1209; am. 1995, ch. 54, § 3, p. 122.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 1991, ch. 320 declared and provided that the act should be in full force and effect on and after

passage and approval retroactive to December 11, 1990. Approved April 4, 1991.

JUDICIAL DECISIONS

ANALYSIS

Direct mailing to idaho addresses.

Right and power over tangible personal property.

Use defined.

Direct Mailing to Idaho Addresses.

Foreign corporation was subject to use tax imposed by the tax commission for activity which involved sending of printed advertising materials to state addresses, even though all materials sent to state residents were printed by independent third-party letter shops pursuant to advertiser's instructions, and printers and letter shops were located outside of state and sent materials by depositing them in U.S. mail. *American Express Travel Related Servs. Co. v. Tax Comm'n*, 128 Idaho 902, 920 P.2d 921 (1996).

Right and Power Over Tangible Personal Property.

Where the retailer had its advertising supplements printed out-of-state and paid a newspaper to insert and deliver the supplements with the newspaper, it used the inserts

within the meaning of the use tax statute since it exercised, through its contracts, rights and powers over the inserts incident to their ownership, and the inserts were used for the purpose of making sales and profits. *K Mart Corp. v. Idaho State Tax Comm'n*, 111 Idaho 719, 727 P.2d 1147 (1986), cert. denied and appeal dismissed, 480 U.S. 942, 107 S. Ct. 1597, 94 L. Ed. 2d 784 (1987).

Use Defined.

This section's definition of "use" does not create an independent exemption, nor does it allow a contractor to rely on the exemption applicable to the party to whom it is providing services. *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992).

Cited in: *Leonard Constr. Co. v. State ex rel. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975).

63-3616. Tangible personal property. — (a) The term “tangible personal property” means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

(b) The term “tangible personal property” includes any computer software which is not a custom computer program.

(i) As used in this subsection, the term “computer software” means any computer program, part of a program or any sequence of instructions for automatic data processing equipment or information stored in an electronic medium. Computer software is deemed to be tangible personal property for purposes of this chapter regardless of the method by which the title, possession or right to use the software is transferred to the user.

(ii) As used in this subsection, the term “custom computer program” means any computer software (as defined in this subsection) which is written or prepared exclusively for a customer and includes those services represented by separately stated charges for the modification of existing prewritten programs when the modifications are written or prepared exclusively for a customer. The term does not include a “canned” or prewritten program which is held or existing for general or repeated sale, lease or license, even if the program was initially developed on a custom basis or for in-house use. Modification to an existing prewritten program to meet the customer’s needs is custom computer programming only to the extent of the modification, and only to the extent that the actual amount charged for the modification is separately stated on invoices, statements, and other billing documents supplied to the purchaser.

(c) The term “tangible personal property” does not include advertising space when sold to an advertiser or its agent by the publisher of the newspaper or the magazine in which the advertisement is displayed or circulated. [1965, ch. 195, § 16, p. 408; am. 1986, ch. 192, § 1, p. 488; am. 1993, ch. 26, § 2, p. 87; am. 1998, ch. 50, § 1, p. 200.]

JUDICIAL DECISIONS

Services.

The definition of tangible personal property does not include such intangibles as services; however, this does not mean that all services

are exempt from taxation under the Sales Tax Act. *Old W. Realty, Inc. v. Idaho State Tax Comm’n*, 110 Idaho 546, 716 P.2d 1318 (1986).

OPINIONS OF ATTORNEY GENERAL

County authorities must collect and remit sales tax for photocopies sold by them. OAG 84-2.

63-3617. Tax collector. [Repealed.]

STATUTORY NOTES

Compiler’s Notes. — This section, comprising S.L. 1965, ch. 195, § 17, p. 408, defining “tax collector” to mean the tax collector of

the state, was repealed by S.L. 1967, ch. 125, § 12.

63-3618. Taxpayer. — The term “taxpayer” means any person subject to or liable for any taxes imposed by this act. [1965, ch. 195, § 18, p. 408.]

STATUTORY NOTES

Compiler’s Notes. — For words “this act” see Compiler’s Notes, § 63-3601.

63-3619. Imposition and rate of the sales tax. — An excise tax is hereby imposed upon each sale at retail at the rate of six percent (6%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

(a) The tax shall apply to, be computed on, and collected for all credit, installment, conditional or similar sales at the time of the sale or, in the case of rentals, at the time the rental is charged.

(b) The tax hereby imposed shall be collected by the retailer from the consumer.

(c) The state tax commission shall provide schedules for collection of the tax on sales which involve a fraction of a dollar. The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time and not separately upon each item purchased. The retailer may retain any amount collected under the bracket system prescribed which is in excess of the amount of tax for which he is liable to the state during the period as compensation for the work of collecting the tax.

(d) It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it or any part thereof will be refunded. Any person violating any provision of this section is guilty of a misdemeanor.

(e) The tax commission may by rule provide that the amount collected by the retailer from the customer in reimbursement of the tax be displayed separately from the list price, the price advertised on the premises, the marked price, or other price on the sales slip or other proof of sale.

(f) The taxes imposed by this chapter shall apply to the sales to contractors purchasing for use in the performance of contracts with the United States. [1965, ch. 195, § 19, p. 408; am. 1974, ch. 175, § 1, p. 1437; am. 1984, ch. 287, § 2, p. 670; am. 1987, ch. 31, § 2, p. 47; am. 1996, ch. 46, § 4, p. 119; am. 1998, ch. 48, § 2, p. 195; am. 2003, ch. 318, § 2, p. 870; am. 2006 (1st E.S.), ch. 1, § 18.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective October 1, 2006, substituted “the rate of six percent (6%)” for “the rate of five percent (5%)” in the introductory paragraph.

Compiler’s Notes. — Section 10 of S.L. 2003, ch. 318, provides: “Severability. The

provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Section 25 of S.L. 2006 (1st E.S.), ch. 1, provides: "The Legislature finds and declares that the issue of the property tax funding maintenance and operations of public schools is of importance to the citizens of the state of Idaho. As a representative body, members of the Legislature desire to be responsive and responsible to these citizens. For this reason, the Legislature herewith submits an advisory ballot to the electors of the state of Idaho, and the results will guide the Legislature as to whether the three-tenths of one percent property tax previously contained in Section 33-802, Idaho Code, and levied against the market value of taxable property in the school districts for maintenance and operation purposes of school districts should continue to be removed and the funds be replaced by a sufficient increase in the state sales tax.

"The Secretary of State shall have the question below placed on the 2006 general election ballot and shall take necessary steps to have the results on the question tabulated. The

question shall be as follows:

"Should the State of Idaho keep the property tax relief adopted in August 2006, reducing property taxes by approximately \$260 million and protecting funding for public schools by keeping the sales tax at 6%?"

"The advisory question provided for in this act is hereby declared to be a 'measure' for purposes of Chapter 66, Title 67, Idaho Code, and the provisions of Chapter 66, Title 67, Idaho Code, shall apply thereto."

The advisory question was answered in the affirmative by the voters in the 2006 general election.

Effective Dates. — Section 11 of S.L. 2003, ch. 318, provides: "An emergency existing thereof, which emergency is hereby declared to exist, Sections 1, 2, 3 and 10 of this act shall be in full force and effect on and after May 1, 2003; and Section 4 of this act shall be in full force and effect on and after June 1, 2003. Sections 5, 7 and 8 of this act shall be in full force and effect on and after July 1, 2005. Sections 6 and 9 of this act shall be in full force and effect on and after August 1, 2005."

JUDICIAL DECISIONS

ANALYSIS

Exemptions.

Jury instructions.

Prefabricated homes.

Sales tax applicable.

Seller assuming liability.

Exemptions.

One claiming an exemption to the general taxing authority must establish his entitlement to such an exemption. Having failed to allege or break out from the monthly fee paid to the multiple listing service those amounts properly attributable to the services in addition to the receipt of multiple listing booklets, the entire amount of the fee was properly considered the "sale price" for the multiple listing booklets and was the amount subject to the sales tax. *Old W. Realty, Inc. v. Idaho State Tax Comm'n*, 110 Idaho 546, 716 P.2d 1318 (1986).

Jury Instructions.

Where the jury was not instructed to find the element of "evading, defeating or avoiding" sales tax, which would have raised the defendant's offense to a felony as charged, and where the instruction on the misdemeanor sales tax violation did not define the crime as a lesser included offense of a felony sales tax violation, the defendant could not be sentenced for a felony conviction. *State v. Nunez*, 133 Idaho 13, 981 P.2d 738 (1999).

Prefabricated Homes.

The sales tax on prefabricated homes was based on the value of materials used in construction and not on the sale price of the homes themselves, where the manufacturer of prebuilt homes contracted to construct buildings according to customers' specifications, transported the completed homes to the customers' properties, attached the homes to foundations and then transferred title to the customers. *Idaho State Tax Comm. v. Boise Cascade Corp.*, 97 Idaho 312, 543 P.2d 865 (1975).

Sales Tax Applicable.

Pursuant to § 63-3612(2)(f), initiation fees, membership dues, assessments and unused dining minimums which non-profit country club charged its members were subject to state sales tax. *Crane Creek Country Club v. Idaho State Tax Comm'n*, 122 Idaho 880, 841 P.2d 410 (1992).

Seller Assuming Liability.

Where the sellers of a motel had committed themselves to a position of not requiring buyers to pay a sales tax and thus sellers had

assumed responsibility for the sales tax levied as a result of the transaction, sellers, who subsequently failed to perfect an appeal from assessment of the tax, were estopped to obtain reimbursement for the sales tax from the buyers. *Evans v. Idaho State Tax Comm'n*, 97 Idaho 148, 540 P.2d 810 (1975).

Cited in: *Boise Bowling Center v. State*, 93 Idaho 367, 461 P.2d 262 (1969); *Evans v. Idaho State Tax Comm'n*, 95 Idaho 54, 501 P.2d 1054 (1972); *State v. Neufeld*, 95 Idaho 705, 518 P.2d 967 (1974); *Bunker Hill Co. v. State ex rel. State Tax Comm'n*, 111 Idaho 457, 725 P.2d 162 (1986).

OPINIONS OF ATTORNEY GENERAL

A vendor who sells a ski lift ticket from a location within the city limits of the City of Sun Valley has a responsibility to collect city local option sales tax from the purchaser of

the ticket; the tax thus collected must be remitted to the City of Sun Valley in the manner provided in the city's municipal sales tax ordinance. OAG 91-6.

63-3620. Permits — Issuance — Revocation — Penalties. —

(a) Every retailer engaged in business in this state, before conducting business within this state, shall file with the state tax commission an application for a seller's permit. Every application for a permit shall be made upon a form prescribed by the state tax commission and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place or places of business, and such other information as the state tax commission may require. The applications, or any information contained thereon, may be made available by the tax commission to authorized representatives of state or federal agencies. The application shall be signed by the owner if he is a natural person or by an individual authorized by the seller to sign the application. Except as provided in subsection (f) of this section, permits shall be issued without charge.

(b) The state tax commission, for the efficient administration of this chapter, may issue:

(1) Temporary seller's permits. No retailer shall be issued more than three (3) temporary permits in one (1) calendar year. A temporary permit shall be valid only for the period of time shown on the face thereof.

(2) Wholesaler's permits to persons who are not retailers but who purchase tangible personal property for resale. A wholesaler's permit shall be valid for no more than twelve (12) consecutive months and may be renewed by the commission.

(c) The person signing the application shall certify that the applicant will actively engage in or conduct a business making sales subject to tax under this chapter.

(d) After compliance by the applicant with the requirements set out above and in section 63-3625, Idaho Code, the state tax commission shall grant and issue to each applicant a permit. A permit shall not be assignable, and shall be valid only for the person in whose name it is issued. The permit or a copy thereof shall at all times be conspicuously displayed at each place where the person to whom it is issued conducts business.

(e) A seller whose permit has been previously suspended or revoked shall pay the state tax commission a fee of ten dollars (\$10.00) for the renewal or issuance of a permit in the event of a first revocation and twenty-five dollars (\$25.00) for renewal after each successive revocation unless the suspension or revocation is for inactivity pursuant to section 63-3620A, Idaho Code.

(f) Whenever any person fails to comply with any provision of this chapter relating to the sales tax or any rules of the state tax commission relating to the sales tax prescribed and adopted under this chapter, the state tax commission may revoke or suspend any one (1) or more of the permits held by the person or may deny a new permit to such person. Notice of revocation or denial shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code. The state tax commission shall not issue a new permit after the revocation of a permit unless the commission is satisfied that the former holder of the permit will comply with the provisions of this chapter relating to the sales tax and the rules of the state tax commission.

(g) A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and any person who is a responsible person, as defined in section 63-3627, Idaho Code, of such a business shall, after receiving written notice from the state tax commission, be subject to a civil penalty not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense, which the state tax commission may assess as a deficiency pursuant to section 63-3629, Idaho Code. [1965, ch. 195, § 20, p. 408; am. 1969, ch. 261, § 3, p. 800; am. 1988, ch. 86, § 1, p. 169; am. 1990, ch. 439, § 1, p. 1208; am. 1991, ch. 1, §§ 1, 4, p. 3; am. 1991, ch. 176, § 2, p. 428; am. 1992, ch. 16, § 2, p. 39; am. 1994, ch. 111, § 2, p. 244; am. 1996, ch. 46, § 5, p. 119; am. 1996, ch. 210, § 1, p. 679; am. 1997, ch. 62, § 2, p. 121; am. 1998, ch. 48, § 3, p. 195; am. 2003, ch. 9, § 1, p. 19; am. 2006, ch. 61, § 1, p. 191.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 46, § 5, and ch. 210, § 1, both effective July 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 46, § 5 in subsection (e) in the first sentence deleted “or regulations” following “rules”, and in the present third sentence substituted “rules” for “regulations” preceding “of the state tax commission”; and deleted a subsection (j) which read, “If a purchaser gives a resale certificate with respect to the purchase of fungible goods and thereafter commingles these goods with other fungible goods not so purchased but with such similarity that the identity of the constituent goods in the commingled mass cannot be determined, sales from the mass of commingled goods shall be deemed to be sales of the goods so purchased until a quantity of commingled goods equal to the quantity of purchased goods so commingled has been sold.”

The 1996 amendment, by ch. 210, § 1 in subsection (a) in the first sentence substituted “retailer engaged in business in this state, before conducting” for “person desiring to engage in or conduct” following “Every”, deleted

“as a seller” preceding “within this”, added a comma following “within this state” and added “seller’s” preceding “permit.”, and in the fourth sentence substituted “or by an individual” for “; in the case of an association or partnership by a member or partners; in the case of a corporation by an executive officer or other person” following “he is a natural person”, substituted “seller” for “corporation” following “authorized by the”, and in the fifth sentence substituted “Except as provided in subsection (e) of this section,” for “Initial”; in subsection (e) in the first sentence substituted “chapter” for “act” following “provisions of this” and “adopted under this”, deleted “or regulations” following “rules” and deleted “, upon hearing, after giving the person ten (10) days notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked,” following “the state tax commission”, deleted former second and third sentences which read, “The state tax commission shall give to the person written notice of the suspension or revocation of any of his permits. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency

determination.”, added the present second sentence and in the present third sentence substituted “chapter” for “act” following “provisions of this” and substituted “rules” for “regulations” following “tax and the”; in subdivision (g)(i) in the first sentence substituted “chapter” for “act” following “administration of this”; and deleted subsection (j) which read as set out in the preceding paragraph.

The 2006 amendment, by ch. 61, rewrote subsection (g) which formerly read: “A person who engages in business as a seller in this state without a permit or permits, or after a permit has been suspended, and each officer of any corporation which so engages in business is guilty of a misdemeanor punishable by a fine not in excess of one hundred dollars (\$100), and each day shall constitute a separate offense.”

Compiler’s Notes. — The office of state tax collector has been abolished and the pow-

ers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

Effective Dates. — Section 11 of S.L. 1991, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1992, except that the state tax commission may take such necessary actions, including the adoption of regulations and the implementation of procedures, prior to January 1, 1992, as are necessary to start to implement the provisions by not later than April 1, 1992.”

Section 7 of S.L. 1991, ch. 1 in subsection (1) provided that this section as amended by § 1 would be effective retroactive to January 1, 1991 and subsection (2) of ch. 1 provided that § 4 of S.L. 1991, which also amended this section would become effective on and after January 1, 1992.

JUDICIAL DECISIONS

Assignment.

A sales tax permit is not assignable and is valid only for the person in whose name it is issued. *State Tax Comm’n v. Western Electronics, Inc.*, 99 Idaho 226, 580 P.2d 72 (1978).

Cited in: *Kwik Vend, Inc. v. Koontz*, 94 Idaho 166, 483 P.2d 928 (1971); *State v. Neufeld*, 95 Idaho 705, 518 P.2d 967 (1974).

63-3620A. Revocation, suspension or expiration of permits held by persons not actively engaged in business. — (1) A permit shall be held only by persons actively engaged in making sales subject to tax under this chapter. Any person not so engaged shall forthwith surrender his permit to the state tax commission for cancellation. The state tax commission may revoke the permit of a person not actively engaged in making sales subject to tax under this chapter.

(2) Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(3) A permit held by a person who, for a period of twelve (12) consecutive months, reports no sales shall expire automatically upon the state tax commission providing notice of the expiration to the last known address of the person to whom the permit was issued.

(4) The state tax commission may provide by rule for the temporary suspension of permits held by persons engaged in seasonal business or who may otherwise temporarily not be actively engaged in the business of making sales subject to tax under this chapter. [I.C., § 63-3620A, as added by 1988, ch. 86, § 2, p. 169; am. 1996, ch. 46, § 6, p. 119; am. 1996, ch. 210, § 2, p. 679.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 46, § 6, and ch. 210, § 1, both effective July 1, 1996 —

which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 46, § 6 in

present subsection (4) substituted "rule" for "regulation" following "may provide by".

The 1996 amendment, by ch. 210, § 2 in the section heading substituted ", suspension or expiration" for "or cancellation", added present subsections (2) and (3), renumbered former subsection (2) as present subsection (4) and in such subsection substituted "rule"

for "regulation" following "may provide by" and deleted a subsection (3) which read: "A person holding a seller's permit who, for a period of twelve (12) nonconsecutive months, reports no sales subject to tax may be deemed by the state tax commission to be a person not actively engaged in making sales subject to tax under this chapter."

63-3620B. Agreements to collect and remit sales tax. — (1) The state tax commission may enter into agreements with persons who may not be otherwise liable to collect and remit sales or use taxes for the collection of sales and use taxes due on their sales of tangible personal property or taxable services to customers in this state. These agreements shall be made on terms and conditions determined by the commission to be in the best interests of the state.

(2) The state tax commission is authorized to participate in the northwest regional sales tax pilot project with states, especially the states of Washington and Utah, and selected businesses, to simplify the sales and use tax administration and to enter into joint agreements for that purpose.

(a) Agreements to participate in the pilot project shall establish provisions for the administration, imposition and collection of sales and use taxes resulting in revenues paid that are substantially the same as would be paid under this chapter.

(b) Business parties to the agreements are excused from complying with the provisions of this chapter to the extent a different procedure is required by the agreements.

(c) Agreements authorized in subsection (2) of this section shall terminate on June 30, 2001. [I.C., § 63-3620B, as added by 1998, ch. 49, § 2, p. 199; am. 1999, ch. 252, § 2, p. 652.]

• STATUTORY NOTES

Prior Laws. — Former § 63-3620B, as added by 1991, ch. 176, § 3, p. 428, was repealed by S.L. 1992, ch. 16, § 3, effective December 31, 1991.

Effective Dates. — Section 3 of S.L. 1998,

ch. 49 declared an emergency and provided that this act shall be in force and effect on and after its passage and approval. Approved March 17, 1998.

63-3620C. Promoter sponsored events. — (1) The operator or promoter contracting with persons for participation in a promoter sponsored event, as a prerequisite to renting or leasing space to any person for conducting business as a retailer on any premises owned or controlled by that operator or promoter, shall obtain:

(a) Written evidence that the retailer holds a valid seller's permit issued pursuant to this chapter or will apply to the state tax commission for a regular or temporary seller's permit; or

(b) A written statement from the retailer that the retailer is not offering for sale any item that is taxable under this chapter or is otherwise not required to hold a valid seller's permit.

(2) Such written evidence or statements shall be in such form and contain such information as the state tax commission shall require. The operator or

promoter shall submit the documents to the state tax commission within ten (10) days following the beginning of the event.

(3)(a) The state tax commission may appoint a sponsor or promoter as its agent for issuing temporary seller's permits to participants in the event and for accounting for such permits.

(b) A sponsor or promoter appointed to issue temporary permits under this subsection shall be entitled to a credit or refund of income or franchise taxes imposed under chapter 30, title 63, Idaho Code, in the amount of one dollar (\$1.00) for each such temporary permit issued by the sponsor or promoter during the taxable year.

(4) Any operator or promoter of a promoter sponsored event who fails to comply with this section may be subject to a minimum penalty of fifty dollars (\$50.00) per event and twenty-five dollars (\$25.00) for each seller over two (2) sellers for whom such records required by subsection (1) of this section are not obtained, but not to exceed one thousand dollars (\$1,000) for each such event. Under no circumstances, shall an operator or a promoter be responsible for sales or use tax not remitted by a retailer at a promoter sponsored event.

(5) The penalties provided in subsection (4) of this section shall not apply:

(a) Unless the state tax commission shall have previously given notice to the operator or promoter or its officer, agent or employee, by certified mail, of the requirements of this section and of a violation of this section by the operator or promoter or its officer, agent or employee; or

(b) If the operator or promoter shows that such failure was due to reasonable cause and not to willful neglect.

(6) The state tax commission shall give notice of any penalty provided in this section and it shall assess such penalties in the manner provided for deficiencies of tax.

(7) "Promoter sponsored event," as used in this section, means a swap meet, flea market, gun show, fair or similar activity involving a series of sales sufficient in number, scope and character to constitute a regular course of business; or any event at which two (2) or more persons offer tangible personal property or services for sale or exchange and at which a fee is charged for the privilege of offering the services or displaying the property for sale or exchange; or at which a fee is charged to prospective buyers for admission to the area where the property or services are offered or displayed for sale or exchange. [I.C., § 63-3620C, as added by 1999, ch. 204, § 1, p. 550; am. 2000, ch. 349, § 1, p. 1176; am. 2007, ch. 111, § 1, p. 318.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 111, deleted "and shall include the retailer's taxpayer identification number" from the end of the first sentence in subsection (2).

Effective Dates. — Section 3 of S.L. 1999,

ch. 204, reads: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval; and Section 1 of this act shall be in full force and effect on and after July 1, 1999."

63-3621. Imposition and rate of the use tax — Exemptions. — An excise tax is hereby imposed on the storage, use, or other consumption in

this state of tangible personal property acquired on or after October 1, 2006, for storage, use, or other consumption in this state at the rate of six percent (6%) of the value of the property, and a recent sales price shall be presumptive evidence of the value of the property unless the property is wireless telecommunications equipment, in which case a recent sales price shall be conclusive evidence of the value of the property.

(a) Every person storing, using, or otherwise consuming, in this state, tangible personal property is liable for the tax. His liability is not extinguished until the tax has been paid to this state except that a receipt from a retailer maintaining a place of business in this state or engaged in business in this state given to the purchaser is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers. A retailer shall not be considered to have stored, used or consumed wireless telecommunications equipment by virtue of giving, selling or otherwise transferring such equipment at a discount as an inducement to a consumer to commence or continue a contract for telecommunications service.

(b) Every retailer engaged in business in this state, and making sales of tangible personal property for the storage, use, or other consumption in this state, not exempted under section 63-3622, Idaho Code, shall, at the time of making the sales or, if storage, use or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the state tax commission.

(c) The provisions of this section shall not apply when the retailer pays sales tax on the transaction and collects reimbursement for such sales tax from the customer.

(d) Every retailer engaged in business in this state or maintaining a place of business in this state shall register with the state tax commission and give the name and address of all agents operating in this state, the location of all distributions or sales houses or offices or other places of business in this state, and such other information as the state tax commission may require.

(e) For the purpose of the proper administration of this act and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this state is sold for storage, use, or other consumption in this state. The burden of proving the sale is tax exempt is upon the person who makes the sale unless he obtains from the purchaser a resale certificate to the effect that the property is purchased for resale or rental. It shall be presumed that sales made to a person who has completed a resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property purchased is taxable to the purchaser as a matter of law in the particular instance claimed on the resale certificate.

A seller may accept a resale certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. The resale certificate

relieves the person selling the property from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds the permit provided for by section 63-3620, Idaho Code, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. Other than as provided elsewhere in this section, when a resale certificate, properly executed, is presented to the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter.

The resale certificate shall bear the name and address of the purchaser, shall be signed by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. The certificate shall be substantially in such form as the state tax commission may prescribe.

(f) If a purchaser who gives a resale certificate makes any storage or use of the property other than retention, demonstration or display while holding it for sale in the regular course of business, the storage or use is taxable as of the time the property is first so stored or used.

(g) Any person violating any provision of this section is guilty of a misdemeanor and punishable by a fine not in excess of one hundred dollars (\$100), and each violation shall constitute a separate offense.

(h) It shall be presumed that tangible personal property shipped or brought to this state by the purchaser was purchased from a retailer, for storage, use or other consumption in this state.

(i) It shall be presumed that tangible personal property delivered outside this state to a purchaser known by the retailer to be a resident of this state was purchased from a retailer for storage, use, or other consumption in this state. This presumption may be controverted by evidence satisfactory to the state tax commission that the property was not purchased for storage, use, or other consumption in this state.

(j) When the tangible personal property subject to use tax has been subjected to a general retail sales or use tax by another state of the United States in an amount equal to or greater than the amount of the Idaho tax, and evidence can be given of such payment, the property will not be subject to Idaho use tax. If the amount paid the other state was less, the property will be subject to use tax to the extent that the Idaho tax exceeds the tax paid to the other state. For the purposes of this subsection, a registration certificate or title issued by another state or subdivision thereof for a vehicle or trailer or a vessel as defined in section 67-7003, Idaho Code, shall be sufficient evidence of payment of a general retail sales or use tax.

(k) The use tax herein imposed shall not apply to the use by a nonresident of this state of a motor vehicle which is registered or licensed under the laws of the state of his residence and is not used in this state more than a cumulative period of time totaling ninety (90) days in any consecutive twelve (12) months, and which is not required to be registered or licensed under the laws of this state.

(l) The use tax herein imposed shall not apply to the use of household goods, personal effects and personally owned motor vehicles by a resident of this state, if such articles were acquired by such person in another state while a resident of that state and primarily for use outside this state and if such use was actual and substantial, but if an article was acquired less than three (3) months prior to the time he entered this state, it will be presumed that the article was acquired for use in this state and that its use outside this state was not actual and substantial. For purposes of this subsection, "resident" shall be as defined in section 63-3013 or 63-3013A, Idaho Code.

(m) The use tax herein imposed shall not apply to the storage, use or other consumption of tangible personal property which is or will be incorporated into real property and which has been donated to and has become the property of:

(1) A nonprofit organization as defined in section 63-3622O, Idaho Code; or

(2) The state of Idaho; or

(3) Any political subdivision of the state.

This exemption applies whether the tangible personal property is incorporated in real property by the donee, a contractor or subcontractor of the donee, or any other person. [1965, ch. 195, § 21, p. 408; am. 1967, ch. 290, § 6, p. 805; am. 1980, ch. 291, § 1, p. 759; am. 1983, ch. 220, § 1, p. 613; am. 1984, ch. 287, § 3, p. 670; am. 1987, ch. 31, § 3, p. 47; am. 1988, ch. 265, § 581, p. 549; am. 1990, ch. 439, § 2, p. 1208; am. 1991, ch. 1, §§ 2, 5, p. 3; am. 1991, ch. 82, § 1, p. 183; am. 1991, ch. 176, § 4, p. 428; am. 1992, ch. 7, § 1, p. 11; am. 1992, ch. 16, § 4, p. 11; am. 1994, ch. 111, § 3, p. 244; am. 1996, ch. 46, § 7, p. 119; am. 1996, ch. 433, § 2, p. 1467; am. 1999, ch. 42, § 4, p. 84; am. 2001, ch. 57, § 1, p. 107; am. 2003, ch. 318, § 3, p. 870; am. 2006 (1st E.S.), ch. 1, § 19.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective October 1, 2006, substituted "October 1, 2006" for "July 1, 2005" and substituted "the rate of six percent (6%)" for "the rate of five percent (5%)" in the introductory paragraph.

Compiler's Notes. — For words "this act", referred to in subsection (e), see Compiler's Notes, § 63-3601.

Section 10 of S.L. 2003, ch. 318, provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declara-

tion shall not affect the validity of the remaining portions of this act."

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Section 25 of S.L. 2006 (1st E.S.), ch. 1, provides: "The Legislature finds and declares that the issue of the property tax funding maintenance and operations of public schools is of importance to the citizens of the state of Idaho. As a representative body, members of the Legislature desire to be responsive and responsible to these citizens. For this reason, the Legislature herewith submits an advisory ballot to the electors of the state of Idaho, and

the results will guide the Legislature as to whether the three-tenths of one percent property tax previously contained in Section 33-802, Idaho Code, and levied against the market value of taxable property in the school districts for maintenance and operation purposes of school districts should continue to be removed and the funds be replaced by a sufficient increase in the state sales tax.

"The Secretary of State shall have the question below placed on the 2006 general election ballot and shall take necessary steps to have the results on the question tabulated. The question shall be as follows:

"Should the State of Idaho keep the property tax relief adopted in August 2006, reducing property taxes by approximately \$260 million and protecting funding for public schools by keeping the sales tax at 6%?"

"The advisory question provided for in this act is hereby declared to be a 'measure' for purposes of Chapter 66, Title 67, Idaho Code, and the provisions of Chapter 66, Title 67, Idaho Code, shall apply thereto."

The advisory question was answered in the affirmative by the voters in the 2006 general election.

Effective Dates. — Section 11 of S.L. 2003, ch. 318, provides: "An emergency existing therefore, which emergency is hereby declared to exist, Sections 1, 2, 3 and 10 of this act shall be in full force and effect on and after May 1, 2003; and Section 4 of this act shall be in full force and effect on and after June 1, 2003. Sections 5, 7 and 8 of this act shall be in full force and effect on and after July 1, 2005. Sections 6 and 9 of this act shall be in full force and effect on and after August 1, 2005."

JUDICIAL DECISIONS

ANALYSIS

Direct mailing to Idaho addresses.
Newspaper inserts.
Prefabricated homes.

Direct Mailing to Idaho Addresses.

Foreign corporation was subject to use tax imposed by the tax commission for activity which involved sending of printed advertising materials to state addresses, even though all materials sent to state residents were printed by independent third-party letter shops pursuant to corporation's instructions, and printers and letter shops were located outside of state and sent materials by depositing them in U.S. mail. *American Express Travel Related Servs. Co. v. Tax Comm'n*, 128 Idaho 902, 920 P.2d 921 (1996).

Newspaper Inserts.

Where the retailer had its advertising supplements printed out-of-state and paid a newspaper to insert and deliver the supplements with the newspaper, it used the inserts within the meaning of the use tax statute since it exercised, through its contracts, rights and powers over the inserts incident to their ownership, and the inserts were used for

the purpose of making sales and profits. *K Mart Corp. v. Idaho State Tax Comm'n*, 111 Idaho 719, 727 P.2d 1147 (1986), cert. denied and appeal dismissed, 480 U.S. 942, 107 S. Ct. 1597, 94 L. Ed. 2d 784 (1987).

Prefabricated Homes.

The sales tax on prefabricated homes was based on the value of materials used in construction and not on the sale price of the homes themselves, where the manufacturer of prebuilt homes contracted to construct buildings according to customers' specifications, transported the completed homes to the customers' properties, attached the homes to foundations and then transferred title to the customers. *Idaho State Tax Comm'n v. Boise Cascade Corp.*, 97 Idaho 312, 543 P.2d 865 (1975).

Cited in: *Kwik Vend, Inc. v. Koontz*, 94 Idaho 166, 483 P.2d 928 (1971); *Leonard Constr. Co. v. State ex rel. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975).

RESEARCH REFERENCES

A.L.R. — Items or materials exempt from use tax as becoming component part or ingre-

dient of manufactured or processed article. 89 A.L.R.5th 493.

63-3621A. Use tax on transient equipment. — (a) As used in this section, the term "transient equipment" means tangible personal property which is:

(1) Subject to use tax in this state; and

(2) Eligible for depreciation under the federal internal revenue code and actually depreciated on the owner's federal income tax return; and

(3) Present in this state for a cumulative period of time totaling not more than ninety (90) days in any consecutive twelve (12) months. For purposes of this subsection, any part of a day is one (1) day.

(b) In the case of transient equipment owned and operated by a nonresident of this state, the use tax imposed by section 63-3621, Idaho Code, may be the lesser of the amount of tax computed upon:

(1) The value of the property. A recent sales price shall be presumptive evidence of the value of the property. If there is no recent sales price, the value shall be the fair market value of the property on the date the property is first brought into Idaho; or

(2) The fair rental value of the property during the time the property is located in Idaho. Fair rental value is the amount for which the same or similar property could be leased or rented by the taxpayer from another, unrelated person in the business of leasing or renting such equipment for profit. A taxpayer electing to pay use tax on the fair rental value must establish the value by clear and convincing evidence. Any allowable credit for sales or use taxes paid to another state shall be first exhausted before any tax becomes due under this section.

(c) If transient equipment taxed upon its fair rental value ceases to qualify as transient equipment, it shall be taxed as provided in section 63-3621, Idaho Code, based upon the value at the time the equipment ceased to qualify.

(d) A taxpayer may elect to pay tax on the fair rental value on or before the due date of the first tax return on which the use tax is due. The election need not be filed with the state tax commission but must be reflected in the records supporting the computation of the tax shown to be due on the return. After the due date of the first tax return on which the use tax is due, an election may only be made with the written approval of the state tax commission. The commission shall grant approval only upon evidence establishing that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment.

(e) Upon discovery of property subject to use tax in this state in regard to which no use tax has been reported, the state tax commission may assert use tax in the manner provided in section 63-3629, Idaho Code, based upon the fair rental value if the commission finds that at the time the equipment first became subject to use tax in this state, the taxpayer intended a use for the equipment which would have qualified the property as transient equipment. [I.C., § 63-3621A, as added by 1992, ch. 7, § 2, p. 11.]

STATUTORY NOTES

Federal References. — The federal internal revenue code, referred to in paragraph (a)(2), is codified as 26 U.S.C.S. § 1 et seq.

63-3622. Exemptions — Exemption and resale certificates — Penalties. — (a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the

purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate. [I.C., § 63-3622, as added by 1992, ch. 16, § 6, p. 39; am. 1996, ch. 46, § 8, p. 119; am. 1997, ch. 62, § 3, p. 121.]

STATUTORY NOTES

Prior Laws. — Former § 63-3622 which comprised 1965, ch. 195, § 22, p. 408; am. 1965, ch. 200, § 1, p. 442; am. 1967, ch. 290, § 7, p. 805; am. 1971, ch. 163, § 1, p. 782; am. 1974, ch. 175, § 2, p. 1437; am. 1975, ch. 96, § 1, p. 193; am. 1975, ch. 152, § 1, p. 389; am. 1976, ch. 262, § 1, p. 882; am. 1976, ch. 274, § 1, p. 944; am. 1976, ch. 297, § 3, p. 1025; am. 1977, ch. 160, § 1, p. 412; am. 1977, ch. 248, § 1, p. 725; am. 1978, ch. 186, § 1, p. 418; am. 1979, ch. 24, § 2, p. 34; am. 1979, ch. 60, § 1, p. 158; am. 1979, ch. 125, § 1, p. 384; am. 1979, ch. 142, § 1, p. 439; am. 1980, ch. 67, § 1, p. 138; am. 1980, ch. 122, § 1, p. 273; am. 1980, ch. 304, § 2, p. 781; am. 1982, ch. 128, § 1, p. 366; am. 1982, ch. 255, § 11, p. 653; am. 1984, ch. 239, § 1, p. 570; am. 1987, ch. 18, § 2, p. 23; am. 1990, ch. 439, § 3, p. 1208; am. 1991, ch. 1, §§ 3, 6, p. 3 was repealed by § 5 of S.L. 1992, ch. 16 effective January 1, 1992.

Another former § 63-3622, which comprised I.C., § 63-3622, as added by 1991, ch.

176, § 6, p. 428, was repealed by S.L. 1992, ch. 16, § 5.

Compiler's Notes. — In 1991 this section was amended by S.L. 1991, ch. 1, § 3, effective retroactive to January 1, 1991 and ch. 1, § 6, effective January 1, 1992; it was also repealed by S.L. 1991, ch. 176, § 5 and § 6 of ch. 176 enacted a new § 63-3622 effective January 1, 1992. In 1992 § 5 of ch. 16 repealed § 63-3622 and § 6 of ch. 16 enacted a new § 63-3622, effective retroactive to December 31, 1991, and such version has been compiled as § 63-3622.

Section 12 of S.L. 1992, ch. 16 read: "The tax commission is authorized and directed to refund the fee imposed and collected for purchase of a tax exemption certificate under sections 63-3620B and 63-3622, Idaho Code, as those sections existed on January 1, 1992, and the amount necessary to make such refunds is hereby appropriated from the general account."

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

Construction material.
Manufacturing exemption.
Pollution control equipment.
Production exemption.
—Determination of applicability.
—Exclusion.
Real property.
Retailing.
Tangible personal property.

Construction Material.

Where a building contractor entered into a contract with a manufacturer whereby the contractor was to construct a sulphuric acid plant, the contractor was liable for a use tax on the materials and equipment used in erect-

ing the plant which was directly related to the sulphuric acid production process, even though the manufacturer would have been exempt from the payment of use taxes. *Leonard Constr. Co. v. State ex rel. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975).

Manufacturing Exemption.

In order to qualify for the production exemption from the state sales tax, the property in question must be tangible personal property, primarily and directly used or consumed in a processing operation, necessary or essential to the process, used by a business in its manufacturing or processing operation, and not used in a manner merely incidental to the manufacturing or processing operation. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

The pneumatic blower and the chip bin, used in a lumber mill operation, were items of equipment which were necessary and essential to the taxpayer's manufacturing process and were directly used in the process, as a result, these items fell within the sales tax exemption. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

The sprinkler system installed by the taxpayer in his lumber mill was not equipment directly used in the milling operation, instead the sprinkler system was a type of standby safety equipment which was properly characterized as being incidental to the manufacturing process and therefore was not within the sales tax exemption. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

Pollution Control Equipment.

A taxpayer's contention that certain equipment used in a lumber mill operation was pollution control equipment and that the trial court erred in failing to find it exempt from the state sales tax was without merit. *Richardson v. State Tax Comm'n*, 100 Idaho 705, 604 P.2d 719 (1979).

Production Exemption.

Safety clothing and equipment was not "primarily and directly used or consumed" in the production process and was not subject to the production exemption from the sales tax under a former subsection (d) of this section. *Bunker Hill Co. v. State ex rel. State Tax Comm'n*, 111 Idaho 457, 725 P.2d 162 (1986), overruled on other grounds, *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992).

—Determination of Applicability.

The date of purchase of the materials is used to determine the applicability of the production exemption under a former subsection (d) of this section.

Bunker Hill Co. v. State ex rel. State Tax Comm'n, 111 Idaho 457, 725 P.2d 162 (1986), overruled on other grounds, *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992).

—Exclusion.

Former similar section specifically excluded from the production exemption equipment which is merely used to "maintain" production equipment. *Bunker Hill Co. v. State ex rel. State Tax Comm'n*, 111 Idaho 457, 725 P.2d 162 (1986), overruled on other grounds, *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992).

Real Property.

The purchase of the materials used to construct smokestacks affixed to real estate on large foundations come within the provisions of subsection (a) of § 63-3609 and were not exempt under a former similar section as the stacks were real property. *Bunker Hill Co. v. State ex rel. State Tax Comm'n*, 111 Idaho 457, 725 P.2d 162 (1986), overruled on other grounds, *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992).

Retailing.

Where the taxpayer was primarily devoted to retailing and not to "manufacturing, processing, mining, farming, or fabricating," the production exemption does not apply to the taxpayer, and it had to pay use taxes on its advertising inserts. *K Mart Corp. v. Idaho State Tax Comm'n*, 111 Idaho 719, 727 P.2d 1147 (1986), cert. denied and appeal dismissed, 480 U.S. 942, 107 S. Ct. 1597, 94 L. Ed. 2d 784 (1987).

Tangible Personal Property.

This section exempts two types of tangible personal property: The property that becomes a component part of property sold at retail and property used or consumed in the production of property sold at retail; further restricting each of these two clauses is the limitation of the exemption to a "business or segment of a business which is primarily devoted to such operation or operations" as "manufacturing, processing, mining, farming, or fabricating." *K Mart Corp. v. Idaho State Tax Comm'n*, 111 Idaho 719, 727 P.2d 1147 (1986), cert. denied and appeal dismissed, 480 U.S. 942, 107 S. Ct. 1597, 94 L. Ed. 2d 784 (1987).

63-3622A. Prohibited taxes. — There is exempted from the taxes imposed by this chapter the sale at retail, storage, use or other consumption of tangible personal property or taxable services which this state is prohibited from taxing under the constitution of the United States. [I.C. § 63-3622A, as added by 1984, ch. 239, § 2, p. 570.]

63-3622B. Out-of-state contracts. — There is exempted from the taxes imposed by this chapter the sale of tangible personal property to contractors for subsequent incorporation into real property outside this state in the performance of a contract to improve the out-of-state realty unless this provision would result in subjection of said contractor to a use or similar excise tax in another state. [I.C., § 63-3622B, as added by 1984, ch. 239, § 3, p. 570; 1993, ch. 7, § 1, p. 23.]

63-3622C. Motor fuels subject to tax. — There are exempted from the taxes imposed by this chapter purchases which are subject to the motor fuels tax imposed by chapter 24, title 63, Idaho Code, and purchases upon which motor fuels taxes have actually been paid and the sale or use of any fuel which is subsequently transported outside the state for use thereafter outside the state. Nothing in this chapter shall be construed to authorize the imposition of a tax on fuel brought into this state in the fuel tanks of motor vehicles or railroad locomotives in interstate commerce. [I.C., § 63-6322C, as added by 1984, ch. 239, § 4, p. 570; am. 1985, ch. 35, § 1, p. 69; am. 1987, ch. 18, § 7, p. 23; am. 1999, ch. 42, § 5, p. 84.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1987, ch. 18 read: "STATEMENT OF INTENT. It is the intention of the legislature by this act to reconcile and clarify any statutory conflicts which may have resulted from the enactment by the Second Regular Session of the Forty-seventh Idaho Legislature in 1984 of four acts relating to exemptions from sales tax. These acts were Chapter 239 (H.B. 680), Chapter 119 (H.B. 664), Chapter 195 (H.B. 586), and Chapter 287 (H.B. 699), Laws of 1984. The purpose of this act is to repeal Section 63-3622, Idaho Code, as amended by

Chapters 119, 195 and 287, Laws of 1984 and by Chapters 30, 120 and 180, Laws of 1986. Section 63-3622, Idaho Code, as amended by Chapter 239, Laws of 1984, is to be retained and is hereby ratified. Changes to sales tax exemptions not reflected in Chapter 239, Laws of 1984 are, by this act, to be restated in the new code sections enacted by Chapter 239, Laws of 1984."

Effective Dates. — Section 8 of S.L. 1987, ch. 18 declared an emergency. Approved March 2, 1987.

63-3622D. Production exemption. — There are exempted from the taxes imposed by this chapter:

(a) The sale at retail, storage, use or other consumption in this state of:

(1) Tangible personal property which will enter into and become an ingredient or component part of tangible personal property manufactured, processed, mined, produced or fabricated for sale.

(2) Tangible personal property primarily and directly used or consumed in or during a manufacturing, processing, mining, farming, or fabricating operation, including, but not limited to, repair parts, lubricants, hydraulic oil, and coolants, which become a component part of such tangible personal property; provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation.

(3) Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change in the product or for removing impurities from the product or otherwise placing the product in a more marketable condition as part of an operation.

described in subsection (a)(2) of this section, and chemicals and equipment used in clean-in-place systems in the food processing and food manufacturing industries.

(4) Safety equipment and supplies required to meet a safety standard of a state or federal agency when such safety equipment and supplies are used as part of an operation described in subsection (a)(2) of this section.

(5) Plants to be used as part of a farming operation.

(b) Other than as provided in subsection (c) of this section, the exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section are available only to a business or separately operated segment of a business which is primarily devoted to producing tangible personal property which that business will sell and which is intended for ultimate sale at retail within or without this state. A contractor providing services to a business entitled to an exemption under this section is not exempt as to any property owned, leased, rented or used by it unless, as a result of the terms of the contract, the use of the property is exempt under section 63-3615(b), Idaho Code.

(c) The exemptions allowed in subsections (a)(1), (a)(2), (a)(3) and (a)(4) of this section shall also be available to a business, or separately operated segment of a business, engaged in farming or mining, whether as a subcontractor, contractor, contractee or subcontractee, when such business or segment of a business is primarily devoted to producing tangible personal property which is intended for ultimate sale at retail within or without this state, without regard to the ownership of the product being produced.

(d) As used in this section, the term "directly used or consumed in or during" a farming operation means the performance of a function reasonably necessary to the operation of the total farming business, including, the planting, growing, harvesting and initial storage of crops and other agricultural products and movement of crops and produce from the place of harvest to the place of initial storage. It includes disinfectants used in the dairy industry to clean cow udders or to clean pipes, vats or other milking equipment.

(e) The exemptions allowed in this section do not include machinery, equipment, materials and supplies used in a manner that is incidental to the manufacturing, processing, mining, farming or fabricating operations such as maintenance and janitorial equipment and supplies.

(f) Without regard to the use of such property, this section does not exempt:

(1) Hand tools with a unit purchase price not in excess of one hundred dollars (\$100). A hand tool is an instrument used or worked by hand.

(2) Tangible personal property used in any activities other than the actual manufacturing, processing, mining, farming or fabricating operations such as office equipment and supplies, and equipment and supplies used in selling or distributing activities.

(3) Property used in transportation activities.

(4) Machinery, equipment, tools or other property used to make repairs. This subsection does not include repair parts that become a component part of tangible property exempt from tax under this section or lubricants,

hydraulic oil, or coolants used in the operation of tangible personal property exempt under this section.

(5) Machinery, equipment, tools or other property used to manufacture, fabricate, assemble or install tangible personal property which is:

(i) Not held for resale in the regular course of business; and

(ii) Owned by the manufacturer, processor, miner, farmer or fabricator; provided, however, this subsection does not prevent exemption of machinery, equipment, tools or other property exempted from tax under subsection (a)(2) or (a)(3) of this section.

(6) Any improvement to real property or fixture thereto or any tangible personal property which becomes or is intended to become a component of any real property or any improvement or fixture thereto.

(7) Motor vehicles and aircraft.

(8) Tangible personal property used or consumed in processing, producing or fabricating tangible personal property exempted from tax under this chapter in sections 63-3622F and 63-3622I, Idaho Code.

(9) Tangible personal property described in section 63-3622HH, Idaho Code.

(g) Any tangible personal property exempt under this section which ceases to qualify for this exemption, and does not qualify for any other exemption or exclusion of the taxes imposed by this chapter, shall be subject to use tax based upon its value at the time it ceases to qualify for exemption. Any tangible personal property taxed under this chapter which later qualifies for this exemption shall not entitle the owner of it to any claim for refund. [I.C., § 63-3622D, as added by 1984, ch. 239, § 5, p. 570; am. 1987, ch. 326, § 2, p. 682; am. 1989, ch. 257, § 2, p. 632; am. 1990, ch. 122, § 1, p. 292; am. 1990, ch. 431, § 2, p. 1195; am. 1990, ch. 437, § 1, p. 1205; am. 1991, ch. 321, § 3, p. 833; 1993, ch. 319, § 2, p. 1175; am. 1996, ch. 46, § 9, p. 119; am. 1999, ch. 42, § 6, p. 84; am. 2005, ch. 242, § 3, p. 752; am. 2006, ch. 315, § 1, p. 980.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 315, deleted the reference to section 63-3622G in the string cite in subsection (f)(8).

Effective Dates. — Section 3 of S.L. 1989, ch. 257 declared an emergency and provided that the act would become effective retroactively to January 1, 1989. Approved March 29, 1989.

Section 2 of S.L. 1990, ch. 122 declared an emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1990. Approved March 21, 1990.

Section 4 of S.L. 1991, ch. 321 declared an emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to December 11, 1990. Approved April 4, 1991.

Section 3 of S.L. 1993, ch. 319 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to December 11, 1990." Approved March 31, 1993.

Section 4 of S.L. 2005, ch. 242 declared an emergency. Approved April 1, 2005.

JUDICIAL DECISIONS

ANALYSIS

Exemptions.

—Equipment used to construct other equipment.

- Fabrication of manufacturing equipment.
- Independent contractors.
- Leased equipment.
- Repair parts and equipment.
- Legislative intent.
- “Primarily and directly” defined.
- Prospective application.
- “Use” defined.

Exemptions.

—Equipment Used to Construct Other Equipment.

Machinery, equipment and materials used to fabricate, construct and manufacture other equipment, materials and machinery, for manufacturing and processing, is only one vital segment of the complete integrated plant system and operation; accordingly, machinery, equipment and materials used to manufacture, construct and fabricate other machinery, to be used for manufacturing purposes, is directly and primarily used to produce a final product for retail sale and is, therefore, exempt pursuant to the production exemption. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

—Fabrication of Manufacturing Equipment.

The production exemption will apply when a business primarily devoted to manufacturing undertakes to manufacture and fabricate its own manufacturing equipment for use in its manufacturing process; any tangible personal property or equipment used or consumed in the manufacturing or fabricating operation, either in the manufacture of the final product or some integrated, continuous segment thereof, including the construction and installation of the manufacturing equipment, will be exempt from the use and sales tax unless it is specifically prohibited by some other provision. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

—Independent Contractors.

There was no evidence indicating the independent contractors were a business or segment of a business primarily devoted to production operations; accordingly, defendants failed to show that the contractors qualified for the production exemption. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

—Leased Equipment.

Although business’ primary source of revenue is derived from the sale of wood and wood products, the leased machinery used to transform steel or other materials into the machinery that will directly be used to transform the

raw wood would be exempt when used by a business that is primarily devoted to production operations; the entire manufacturing process involved in the operation is an integrated and continuous part of producing the final product for ultimate retail sale. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

Business was a manufacturer of wood and wood products in a business primarily devoted to manufacturing and did not deal with the final consumer of its products or run a retail operation; thus, any leased equipment, or materials used or consumed by business in the manufacturing process, whether it be the manufacture of wood products or the fabrication and manufacturing of tangible personal property used to manufacture the wood or wood products, is exempt from the sales tax unless another exclusion applies. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

Where a significant segment of business activity was devoted to the fabrication and manufacture of its own wood and wood product manufacturing equipment, and since fabrication includes installation of manufacturing equipment, i.e., to unite the parts, the equipment and material used to produce and fabricate the final product in the manufacturing process should also be exempt under this section; leased installation equipment and materials are “primarily and directly used” in integrating the separate parts into the manufacturing system for final use. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

—Repair Parts and Equipment.

Repair parts and equipment used to make a repair to machinery that is primarily and directly used in the production process are exempt unless they are excluded by some other specific statutory provision. *Idaho State Tax Comm’n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

Where a rock crushing operation was a segment of road paving company’s business, which segment was primarily engaged in crushing rocks into gravel for use in cement mixing and ultimate sale by concrete com-

pany, the rock crushing machine was not primarily engaged in crushing rock for road paving; rather, the primary purpose of the rock crusher was to crush for ultimate retail sale. That purpose qualified the crusher and all repair parts and equipment for the production tax exemption under former subdivision (1) of this section. *Central Paving Co. v. Idaho Tax Comm'n*, 126 Idaho 174, 879 P.2d 1107 (1994).

Legislative Intent.

The production exemption must be viewed in light of the legislative intent to tax the ultimate retail consumer, thus avoiding multiple taxation. *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

“Primarily and Directly” Defined.

The production exemption exempts tangible personal property that is primarily and directly used in the production process by a business or segment of a business primarily devoted to production operations; this does not require that the materials, equipment and property used in the production process must directly touch or be actually contained in the final product; the language “primarily

and directly” only means that the materials and personal property must play a primary and direct role in making the final product marketable. *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar law).

Prospective Application.

The new interpretation of the production exemption in *Idaho State Tax Comm'n v. Haener* was applied in a modified prospective fashion to those taxpayers, who on December 11, 1990 (the day *Haener* was issued by Supreme Court of Idaho) had pending an appropriate challenge to the interpretation of the production exemption contained in *Bunker Hill Co. v. State Tax Comm'n*, 111 Idaho 457, 725 P.2d 162 (1986). *Potlatch Corp. v. Idaho State Tax Comm'n*, 120 Idaho 1, 813 P.2d 340 (1991).

“Use” Defined.

Section 63-3615's definition of “use,” does not create an independent exemption, nor does it allow a contractor to rely on the exemption applicable to the party to whom it is providing services. *Idaho State Tax Comm'n v. Haener Bros.*, 121 Idaho 741, 828 P.2d 304 (1992) (decision under former similar version of § 63-3622D).

63-3622E. Containers. — There is exempted from the taxes imposed by this chapter the sale or purchase of containers in the following categories:

(a) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container.

(b) Containers when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this act.

(c) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for filling. [I.C., § 63-3622E, as added by 1984, ch. 239, § 6, p. 570.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” in subsection (b) refer to S.L. 1984, Chapter 239, which is codified as §§ 63-3615,

63-3622A to 63-3622G, 63-3622I to 63-3622M, and 63-3622O to 63-3622X.

63-3622F. Utilities. — There is exempted from the taxes imposed by this chapter the sale or purchase of natural gas, electricity, and water when delivered to consumers at the place of consumption by means of pipes, wires, mains or similar systems. [I.C., § 63-3622F, as added by 1984, ch. 239, § 7, p. 570; 1993, ch. 26, § 3, p. 87.]

63-3622G. Heating materials. — There is exempted from the taxes imposed by this chapter the sale or purchase of any matter used to produce heat by burning, for the purpose of providing heat to any building or for

domestic home use, including wood, coal, petroleum and gas. [I.C., § 63-3622G, as added by 1984, ch. 239, § 8, p. 570.]

63-3622H. Home yard sales. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which 1984, ch. 239, § 9, p. 570, was repealed by comprised I.C., § 63-3622H, as added by S.L. 1997, ch. 62, § 4, effective July 1, 1997.

63-3622I. Literature. — (1) There is exempted from the taxes imposed by this chapter the sale or purchase, or the storage, use or other consumption of literature, pamphlets, periodicals, tracts and books published and sold by an entity qualified under section 501(c)(3) of the internal revenue code; no part of the net earnings of which inures to the benefit of a private individual or shareholder.

(2) As used in this section, "literature" includes information available in alternative forms, including audio-visual and magnetic, optical or other machine-readable media. [I.C., § 63-3622I, as added by 1984, ch. 239, § 10, p. 570; am. 1989, ch. 322, § 1, p. 833; am. 1999, ch. 220, § 1, p. 587.]

STATUTORY NOTES

Federal References. — Section 501 of the Internal Revenue Code is compiled as 26 U.S.C., § 501. ch. 322 declared an emergency and provided that the act would become effective April 1, 1989. Approved April 5, 1989.

Effective Dates. — Section 2 of S.L. 1989,

63-3622J. School, church and senior citizen meals. — There is exempted from the taxes imposed by this chapter the sale of meals by public or private schools under the federal school lunch program or under programs that provide nutritional meals for the aging (Title VII of the Older Americans Act, P.L. 93-29), and the sale of meals by a church to its members at a church function. [I.C., § 63-3622J, as added by 1984, ch. 239, § 11, p. 570.]

STATUTORY NOTES

Federal References. — Title VII of the Older Americans Act, referred to herein, was repealed, effective September 30, 1978. See 42 U.S.C.S. § 3021 et seq.

63-3622K. Occasional sales. — (a) There are exempted from the taxes imposed by this chapter occasional sales of tangible personal property.

(b) As used in this section, the term "occasional sale" means:

(1) A sale of property not held or used by a person in the course of an activity for which he is required to hold a seller's permit, provided such sale is not one (1) of a series of sales sufficient in number or of such a nature as to constitute the seller a "retailer" under section 63-3610(c), Idaho Code. The definition of "occasional sales" provided in this subsection does not apply to use tax in regard to tangible personal property used to improve real property when such property is obtained, directly or indi-

rectly, from a person in the business of making like or similar improvements to real property.

(2) Any transfer of all or substantially all of the property held or used by a person in a business requiring a seller's permit when, after such transfer, the real or ultimate ownership of such property is substantially similar to that which existed before such transfer. For the purpose of this section, stockholders, bondholders, partners, or other persons holding an interest in a corporation or other entity are regarded as having a "real or ultimate ownership" of the property of such corporation or other entity.

(3) A transfer of capital assets to or by a business when the transfer is accomplished through an adjustment of the beneficial interest of the business and the transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, on the capital assets, incidental to:

(i) A division of joint venture, partnership, or limited liability company assets among the members or partners in exchange for a proportional reduction of the transferee's interest in the joint venture, partnership, or limited liability company. For the purposes of this section, the term "limited liability company" means a business organization as defined in chapter 6, title 53, Idaho Code;

(ii) The formation of a partnership, joint venture, or limited liability company by the transfer of assets to the partnership, joint venture, or limited liability company or transfers to a partnership, joint venture, or limited liability company in exchange for proportionate interests in the partnership, joint venture, or limited liability company;

(iii) The formation of a corporation by the owners of a business and the transfer of their business assets to the corporation in exchange for stock in proportion to assets contributed;

(iv) The transfer of assets of shareholders in the formation or dissolution of a corporation;

(v) The transfer of capital assets by a corporation to its stockholders in exchange for surrender of capital stock;

(vi) The transfer of assets from a parent corporation to a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the subsidiary corporation;

(vii) The transfer of assets from a subsidiary corporation which is owned at least eighty percent (80%) by the parent corporation to a parent corporation or another subsidiary which is owned at least eighty percent (80%) by the parent corporation, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets.

(4) The sale, lease or rental of a capital asset in substantially the same form as acquired by the transferor and on which the initial transferor has paid sales or use taxes pursuant to section 63-3619 or 63-3621, Idaho Code, when the owners of all of the outstanding stock, equity or interest of the transferor are the same as the transferee or are members of the same family within the second degree of consanguinity or affinity.

(5) The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

(6) Sales by persons who are not defined as "retailers" in section 63-3610, Idaho Code.

(7) Sales of animals by any 4-H club or FFA club held in conjunction with a fair or the western Idaho spring lamb sale.

(8) The sale or purchase of tangible personal property at home yard sales; provided however, that no more than two (2) such home yard sales per individual calendar year shall be exempt.

(c) As used in this section, the term "occasional sale," when applied to the sale of a motor vehicle, means only:

(1) Sales of motor vehicles between members of a family related within the second degree of consanguinity, unless a sales or use tax was not imposed on the sale of that motor vehicle at the time of purchase, in which situation the sale is taxable.

(2) Sales of motor vehicles that fall within the scope of the transactions detailed in subsection (b)(2) through (b)(5) of this section.

(d) The exemption provided by subsection (b)(1), (b)(4), (b)(6) or (b)(8) of this section shall not apply to the sale, purchase or use of aircraft, as defined in section 21-201, Idaho Code, nor shall it apply to the sale, purchase or use of boats or vessels, as defined in section 67-7003, Idaho Code, nor shall it apply to the sale, purchase or use of snowmobiles, recreational vehicles or off-highway motorbikes, as defined in section 63-3622HH, Idaho Code. [I.C., § 63-3622K, as added by 1984, ch. 239, § 12, p. 570; am. 1988, ch. 157, § 2, p. 284; am. 1988, ch. 367, § 2, p. 1082; am. 1989, ch. 264, § 1, p. 643; am. 1990, ch. 135, § 1, p. 308; am. 1996, ch. 46, § 10, p. 119; am. 1996, ch. 111, § 1, p. 413; am. 1997, ch. 62, § 5, p. 121; am. 1999, ch. 42, § 7, p. 84; am. 2005, ch. 15, § 1, p. 44.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 46, § 10 effective July 1, 1996 and ch. 111, § 1, effective January 1, 1996 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 46, § 10 in subdivision (b)(3)(i) in the first sentence substituted a comma for "or" following "joint venture" in two places, added ", or limited liability company" following "partnership" in two places and added the second sentence; in subdivision (b)(3)(ii) substituted a comma for "or" following "partnership" in three places and added ", or limited liability company" following "joint venture" in three places.

The 1996 amendment, by ch. 111, § 1 in

subdivision (b)(4) deleted "but not the" following "The sale," and deleted a comma following "rental" at the beginning of the subdivision and added "initial" following "transferor and on which the" and in subsection (c) substituted "'occasional sale,'" for "'occasional sale'".

Effective Dates. — Section 2 of S.L. 1989, ch. 264 declared an emergency. Approved April 3, 1989.

Section 2 of S.L. 1996, ch. 111 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to January 1, 1996. Approved March 6, 1996.

63-3622L. De minimis sales. — There is exempted from the taxes imposed by this chapter the sale of articles through a coin-operated vending machine for a total consideration of eleven cents (\$.11) or less and individual transactions involving a total sales price of eleven cents (\$.11) or less. [I.C., § 63-3622L, as added by 1984, ch. 239, § 13, p. 570; am. 1987, ch. 18, § 3, p. 23; am. 1996, ch. 46, § 11, p. 119.]

STATUTORY NOTES

Effective Dates. — Section 8 of S.L. 1987, ch. 18 declared an emergency. Approved March 2, 1987.

63-3622M. Liquor sales. — There are exempted from the taxes imposed by this chapter sales of liquor by the state liquor dispensary to a person licensed under the provisions of chapter 9, title 23, Idaho Code, for resale as liquor by-the-drink. [I.C., § 63-3622M, as added by 1984, ch. 239, § 14, p. 570.]

63-3622N. Prescriptions. — (a) There are exempted from the taxes imposed by this chapter the following when administered or distributed by a practitioner licensed by the state under title 54, Idaho Code, to administer or distribute such items or when purchased by or on behalf of an individual for use by such individual under a prescription or work order of a practitioner licensed by the state under title 54, Idaho Code, to prescribe such items:

- (1) Drugs, hypodermic syringes, insulin, insulin syringes, artificial eyes, hearing aids, and hearing aid parts and accessories;
- (2) Drugs and supplies used in hemodialysis and peritoneal dialysis;
- (3) Braces and other orthopedic appliances;
- (4) Dental prostheses and other orthodontic appliances, but not including fillings;
- (5) Catheters, urinary accessories, colostomy supplies, and other prosthetic devices which shall include, but is not limited to, enteral and parenteral feeding equipment and supplies, (tubing, pumps, containers) catheter devices and supplies, but not including eyeglasses and contact lenses;
- (6) Equipment and devices or chemical reagents which are used to test or monitor blood or urine of a diabetic;
- (7) Other durable medical equipment and devices and related parts and supplies specifically designed for those products which shall include, but is not limited to: oxygen equipment, oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings and accessories, respiratory therapy equipment, room humidifiers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, IPPB, circuits, devices and supplies, air oxygen mixers, manual resuscitators,

nebulizers, tubing, emergency oxygen delivery units, patient care equipment, physical and occupational therapy items, hospital beds, trapeze bars and bar stand, bed rails, geriatric chairs, lift recliners, bedside commodes, overbed tables, patient lifts, patient lift slings, traction stands and pulleys, shower seating, shower grip bars, raised toilet seats, toilet safety frames, walking canes, quad canes and accessories, walkers, wheeled walkers, walker accessories, I.V. stands, crawlers, posture back supports for seating, posture back supports, wheelchairs, crutches, crutch pads, tips, grips, restraints, standing frame devices and accessories, hand exercise equipment and putty, specially designed hand utensils, leg weights, paraffin baths, hydrocollators, hydrotherm heating pads, communication aids for physically impaired, specialized seating, desks, work stations, foam wedges, writing and speech aids for the impaired, dressing aids, button loops and zipper aids, grooming aids, dental aids, eating and drinking aids, splints, holders, household aids for the impaired, shampoo trays, reaching aids, foam seating pads, decubitus seating pads, bed pads, fitted stroller, alternating pressure pads and pumps, stethoscope, sphygmomanometers, otoscopes, sitting and sleeping cushions, patient transport devices, boards, stairglides, lifts in home, transcutaneous nerve stimulators, muscle stimulators, bone fracture therapy devices.

(b) The term “practitioner” means a physician, surgeon, podiatrist, chiropractor, dentist, optometrist, psychologist, ophthalmologist, nurse practitioner, denturist, orthodontist, audiologist, or hearing aid dealer or fitter.

(c) The term “drug” means a drug which is:

(1) Defined in section 54-1705, Idaho Code, and

(2) Either:

(i) listed in a drug compendia which the state board of pharmacy requires to be maintained by Idaho licensed pharmacies, or

(ii) the use of which requires a prescription under state or federal law. The term shall not include articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in animals other than man.

(d) The term “durable medical equipment” means equipment which:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the home.

(e) The term “prosthetic device” means a device which replaces a missing part or function of the human body and shall include any supplies physically connected to such devices. [I.C., § 63-3622N, as added by 1990, ch. 42, § 2, p. 65; am. 1992, ch. 78, § 1, p. 218; 1993, ch. 26, § 4, p. 87; am. 1996, ch. 46, § 12, p. 119; am. 1998, ch. 130, § 1, p. 483.]

STATUTORY NOTES

Prior Laws. — Former § 63-3622N, which 1984, ch. 239, § 15, p. 570, was repealed by comprised I.C., § 63-3622N, as added by S.L. 1990, ch. 42, § 1.

63-3622O. Exempt private and public organizations. — (1) There are exempted from the taxes imposed by this chapter:

- (a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; and
- (b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and
- (c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including motor vehicles or trailers; and
- (d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and
- (e) Sales to or purchases by centers for independent living; and
- (f) Sales to or purchases by the state of Idaho and its agencies and its political subdivisions; and
- (g) Sales to or purchases by volunteer fire departments or licensed emergency medical service agencies; and
- (h) Sales to or purchases by a qualifying senior citizen center; and
- (i) Sales to or purchases by the Blind Services Foundation, Inc.; and
- (j) Donations to, sales to or purchases by the Advocates for Survivors of Domestic Violence and Sexual Assault, Inc., a nonprofit corporation.
- (k) Sales to or purchases by nonprofit organizations offering free dental clinic services to children.
- (l) Admissions to and purchases by museums, as defined in subsection (2) of this section.

(2) As used in this section, these words shall have the following meanings:

- (a) “Educational institution” shall mean nonprofit colleges, universities, public charter schools organized pursuant to chapter 52, title 33, Idaho Code, and other primary and secondary schools, the income of which is devoted solely to education and in which systematic instruction in the usual branches of learning is given. This definition does not include schools primarily teaching business, dancing, dramatics, music, cosmetology, writing, gymnastics, exercise and other special accomplishments nor parent-teacher associations, parent groups, alumni or other auxiliary organizations with purposes related to the educational function of an institution or collective group of institutions.
- (b) “Hospital” shall include nonprofit institutions licensed by the state for the care of ill persons. It shall not extend to nursing homes or similar institutions.
- (c) “Health-related entities” shall mean the Idaho Cystic Fibrosis Foundation, Idaho Epilepsy League, Idaho Lung Association, March of Dimes, American Cancer Society, Mental Health Association, The Arc, The Children’s Home Society of Idaho, American Heart Association, Idaho Ronald McDonald House, United Cerebral Palsy, Arthritis Foundation, Muscular Dystrophy Foundation, National Multiple Sclerosis Society, Rocky Mountain Kidney Association, American Diabetes Association,

Easter Seals, Idaho Community Action Agencies, Idaho Primary Care Association and community health centers who are members of the Idaho Primary Care Association, the Idaho Diabetes Youth Programs, Special Olympics Idaho, the Idaho Women's and Children's Alliance, and the Family Services Alliance of Southeast Idaho, together with said entities' local or regional chapters or divisions.

(d) "Canal companies" shall include nonprofit corporations which are incorporated solely for the purpose of operating and maintaining and are engaged solely in operation and maintenance of dams, reservoirs, canals, lateral and drainage ditches, pumps or pumping plants.

(e) "Forest protective associations" shall mean associations whose purpose is the furnishing, operating and maintaining of a protective system for the detection, prevention and suppression of forest or range fires. Forest protective associations shall include only those associations with which the state of Idaho has contracted or become a member of pursuant to chapter 1, title 38, Idaho Code.

(f) "Food banks or soup kitchens" shall mean any nonprofit corporation or association, other than the Idaho Foodbank Warehouse, Inc., one of whose regular activities is the furnishing or providing of food or food products to others without charge.

(g) "Nonsale clothier" shall mean any nonprofit corporation or association one of whose primary purposes is the furnishing or providing of clothes to others without charge.

(h) "Clothes" shall mean garments in general, designed or intended to be worn by humans and shall include footwear in addition to wearing apparel.

(i) "Center for independent living" shall mean a private, nonprofit, nonresidential organization in which at least fifty-one percent (51%) of the principal governing board, management and staff are individuals with disabilities and that:

- (i) Is designed and operated within a local community by individuals with disabilities;
- (ii) Provides an array of independent living services and programs; and
- (iii) Is cross-disability.

(j) "Political subdivision" means:

(i) A governmental organization which:

- 1. Embraces a certain territory,
- 2. Is organized for public advantage and not in the interest of private individuals or classes,
- 3. Has been delegated functions of government, and
- 4. Has the statutory power to levy taxes; or

(ii) A public health district created by section 39-408, Idaho Code; or

(iii) A soil conservation district as defined in section 22-2717, Idaho Code; or

(iv) A drainage district created pursuant to chapter 29, title 42, Idaho Code; or

(v) An irrigation district created pursuant to title 43, Idaho Code; or

(vi) A state grazing board created by section 57-1204, Idaho Code; or

(vii) A water measurement district created pursuant to section 42-705 or 42-706, Idaho Code; or

(viii) A ground water management district created pursuant to chapter 51, title 42, Idaho Code.

(k) “Agency of the state of Idaho” shall mean an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this state.

(l) “Volunteer fire department” means an entity exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which primarily provides fire protection, or fire prevention on a not-for-profit basis to surrounding residents.

(m) “Licensed emergency medical service agency (EMS)” means an emergency medical service licensed by the EMS bureau of the department of health and welfare and which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which provides emergency medical services on a not-for-profit basis to surrounding residents.

(n) “Qualifying senior citizen center” means an entity exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code and which is a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

(o) “Museum” means a public institution or an entity exempt from income tax pursuant to section 501(c)(3) of the Internal Revenue Code, which stores, preserves and exhibits objects of art, history, science or other objects of historical, educational or cultural value on a permanent basis in a building, portion of a building or outdoor location and which provides museum services to the public on a regular basis.

(3) The exemption granted by subsection (1)(f) of this section does not include any association or other organization whose members are political subdivisions or state agencies unless the organization is expressly created under the joint powers provision of sections 67-2328 through 67-2333, Idaho Code.

(4) The exemptions granted by subsection (1) of this section do not include the use of tangible personal property by a contractor used to improve real property of an exempt entity when such use is within the definition provided by section 63-3615(b), Idaho Code, whether the use tax liability is included in a contract total or stated separately in a contract.

(5) There is exempted from the taxes imposed in this chapter, the renting of a place to sleep to an individual by the Idaho Ronald McDonald House. [I.C., § 63-36220, as added by 1984, ch. 239, § 16, p. 570; am. 1987, ch. 18, § 6, p. 23; am. 1990, ch. 64, § 1, p. 143; am. 1990, ch. 74, § 1, p. 157; am. 1990, ch. 134, § 1, p. 307; am. 1991, ch. 118, § 1, p. 247; am. 1992, ch. 32, § 1, p. 218; am. 1993, ch. 7, § 2, p. 23; 1993, ch. 402, § 1, p. 1468; am. 1995, ch. 54, § 4, p. 122; am. 1995, ch. 219, § 3, p. 762; am. 1997, ch. 199, § 1, p. 574; am. 1997, ch. 350, § 1, p. 1036; am. 1998, ch. 182, § 1, p. 669; am. 1999,

ch. 42, § 8, p. 84; am. 1999, ch. 244, § 7, p. 623; am. 1999, ch. 279, § 1, p. 694; am. 1999, ch. 287, § 1, p. 711; am. 2000, ch. 309, § 1, p. 1045; am. 2000, ch. 348, § 1, p. 1173; am. 2000, ch. 425, § 1, p. 1376; am. 2002, ch. 90, § 1, p. 225; am. 2002, ch. 120, § 1, p. 335; am. 2002, ch. 255, § 1, p. 733; am. 2003, ch. 16, § 17, p. 48; am. 2004, ch. 115, § 1, p. 387; am. 2006, ch. 89, § 1, p. 261; am. 2006, ch. 211, § 1, p. 640; am. 2006, ch. 316, § 1, p. 983; am. 2007, ch. 90, § 26, p. 246.]

STATUTORY NOTES

Amendments. — This section was amended by two 1997 acts — ch. 199, § 1, effective July 1, 1997 and ch. 350, § 1, effective March 24, 1997 — which do not appear to conflict and have been compiled together.

The 1997 amendment, by ch. 199, § 1 after the section title substituted “(a)” for “(1)”; added a new subsection (a)(5), [(e)](5) in the section as compiled; added a new subsection (b)(9), added as [(i)](9) in the section as compiled, and substituted “(c)” for “(2)”.

The 1997 amendment, by ch. 350, § 1 in the section heading at the beginning substituted “Private and public” for “Nonprofit” preceding “organizations”; substituted “(1)” for “(a)” and redesignated former subsections (1) — (4) as (a) — (d), added subsection (e), added as [(f)] (e) in the section as compiled; redesignated “(b)(1) — (8)” as “(2)(a) — (h)”, added subsection (2)(i), added as [(j)](i) in the section as compiled; added new subsections (3) and (4) and renumbered former subsection (2) as present subsection (5).

This section was amended by four 1999 acts, ch. 42, § 8, ch. 244, § 7, ch. 279, § 1, and ch. 287, § 1, which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 42, in subdivision (1)(d), deleted “licensed” preceding “motor vehicles”; redesignated former subdivision (2)(j)(ix) as present subdivision (2)(k), in present subdivision (2)(k), deleted “An a” preceding “Agency of the state,” substituted “shall mean an office” for “is an office”; in subsection (4), substituted “exemptions” for “exemption,” and deleted “(f)” following “subsection (1).”

The 1999 amendment, by ch. 244, in subdivision (1)(a), substituted “forest protective” for “forest-protective”; in subdivision (2)(a), inserted “public charter schools organized pursuant to chapter 52, title 33, Idaho Code, and other” preceding “primary and secondary”; and in subsection (i), substituted “non-residential” for “non-residential.”

The 1999 amendment, by ch. 279, in subdivision (2)(c), inserted “The Children’s Home Society of Idaho” preceding “Idaho Heart Association”; and in subsection (i), substituted “nonresidential” for “non-residential.”

The 1999 amendment, by ch. 287, in subdivi-

vision (1)(a), substituted “forest protective” for “forest-protective”; in subdivision (2)(c), inserted “Idaho Community Action Agencies, Idaho Primary Care Association and community health centers who are members of the Idaho Primary Care Association” preceding “and Idaho Special Olympics”; and in subsection (i), substituted “nonresidential” for “non-residential.”

This section was amended by three 2000 acts — ch. 309, § 1, ch. 348, § 1 and ch. 425, § 1, all effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 309, § 1, in subdivision (2)(c), inserted “and the Idaho Women’s and Children’s Alliance” following “Idaho Special Olympics,”; and in subdivision (2)(i), substituted “nonresidential” for “non-residential”.

The 2000 amendment, by ch. 348, § 1, in subdivision (2)(c), substituted “American Heart Association” for “Idaho Heart Association”, substituted “Special Olympics Idaho” for “Idaho Special Olympics”; and in subdivision (2)(i), substituted “nonresidential” for “non-residential”.

The 2000 amendment, by ch. 425, § 1, in subdivision (2)(c), inserted “, the Idaho Diabetes Youth Program” following “Idaho Primary Care Association”; and in subdivision (2)(i), substituted “nonresidential” for “non-residential”.

This section was amended by three 2002 acts — ch. 90, § 1, effective July 1, 2002, ch. 120, § 1, effective retroactively to January 1, 2002, and ch. 255, § 1, effective July 1, 2002 — which are compatible and have been compiled together.

The 2002 amendment, by ch. 90, § 1, added “and the Family Services Alliance of Southeast Idaho” near the end of subsection (2)(c), and made related changes.

The 2002 amendment, by ch. 120, § 1, added subsections (1)(g), (2)(l), and (2)(m), and made related changes.

The 2002 amendment, by ch. 255, added subsections (1)(g) and 2(l).

This section was amended by three 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 89, added

subsections (1)(l)(j) and (2)(o). The 2007 amendment by § 26 of Chapter 90 made permanent the provisional, bracketed redesignations, resulting from compiling the 2006 acts together.

The 2006 amendment, by ch. 211, added subsection (1)(k)(j). The 2007 amendment by § 26 of Chapter 90 made permanent the provisional, bracketed redesignations, resulting from compiling the 2006 acts together.

The 2006 amendment, by ch. 316, added subsection (1)(j).

The 2007 amendment, by ch. 90, corrected the designations of the last two paragraphs of subsection (1).

Federal References. — Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (2)(l), is codified as 26 U.S.C.S. § 501(c)(3).

Effective Dates. — Section 2 of S.L. 1990, ch. 64 declared an emergency. Approved March 20, 1990.

Section 2 of S.L. 1991, ch. 118 declared an

emergency. Approved March 27, 1991.

Section 2 of S.L. 1992, ch. 32, declared an emergency. Approved March 12, 1992.

Section 4 of S.L. 1995, ch. 219 declared an emergency and provided that the act shall be in full force and effect on and after its passage and approval. Approved March 20, 1995.

Section 2 of S.L. 1997, ch. 350 declared an emergency. Approved March 24, 1997.

Section 2 of S.L. 1998, ch. 182, declared an emergency and provided this act shall be in full force and effect on and after March 30, 1998. Approved March 20, 1998.

Section 8 of S.L. 1999, ch. 244 declared an emergency. Approved March 24, 1999.

Section 2 of S.L. 2002, ch. 120 declared an emergency retroactively to January 1, 2002. Approved March 20, 2002.

Section 18 of S.L. 2003, ch. 16 declared an emergency. Approved February 12, 2003.

Section 2 of S.L. 2006, ch. 211 declared an emergency retroactively to July 1, 2005 and approved March 24, 2006.

63-3622P. Purchases shipped out-of-state by a common carrier. —

There is exempted from the taxes imposed by this chapter the sale or purchase of tangible personal property shipped by the seller via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state if the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier. [I.C., § 63-3622P, as added by 1984, ch. 239, § 17, p. 570.]

63-3622Q. Out-of-state shipments. — There is exempted from the taxes imposed by this chapter the sale or purchase of tangible personal property which is shipped to a point outside this state for use outside this state pursuant to a contract of sale by delivery by the vendor to such point by means of:

(a) Facilities operated by the vendor;

(b) Delivery by the vendor to a carrier for shipment to a consignee at such point; or

(c) Delivery by the vendor to a customs broker or forwarding agent for shipment outside this state. [I.C., § 63-3622Q, as added by 1984, ch. 239, § 18, p. 570.]

63-3622R. Motor vehicles, used manufactured homes, vessels, all-terrain vehicles, trailers, off-road motorcycles, snowmobiles and glider kits. — There are exempted from the taxes imposed by this chapter:

(a) Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), motorcycles intended for off-road use and snowmobiles, for use outside of this state even though delivery be made within this state, but only when:

(1) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles or trailers will be taken from the point of delivery in this state directly to a point outside this state; and

(2) The motor vehicles, vessels, ATVs, motorcycles intended for off-road use, snowmobiles and trailers will be registered immediately under the laws of another state, will be titled in another state if required to be titled in that state, will not be used in this state more than sixty (60) days in any twelve (12) month period, and will not be required to be titled under the laws of this state.

(3) For the purpose of this subsection (a), the term "all-terrain vehicle" or "ATV" means any recreational vehicle with three (3) or more tires, weighing under eight hundred fifty (850) pounds, forty-eight (48) inches or less in width, having a wheelbase of sixty-one (61) inches or less, traveling on low-pressure tires of ten (10) psi or less.

(4) For the purpose of this section, the term "vessel" means any boat intended to carry one (1) or more persons upon the water which is either:

(i) Sold together with a motor, or

(ii) Eleven (11) feet in length or more, but shall not include canoes, kayaks or inflatable boats, unless such canoes, kayaks or inflatable boats are sold together with a motor.

(b) Sale of used manufactured homes, whether or not such used manufactured homes are sold for use outside this state, and whether or not such used manufactured homes are sold by a dealer. Every manufactured home sale after its sale as a "new manufactured home," as defined in section 63-3606, Idaho Code, is a sale as a used manufactured home.

(c) Sale or lease of motor vehicles with a maximum gross registered weight over twenty-six thousand (26,000) pounds, which shall be immediately registered under the international registration plan, whether or not base plated in Idaho, and the sale or lease of trailers which are part of a fleet of vehicles registered under the international registration plan when such vehicles and trailers are substantially used in interstate commerce. If such a motor vehicle or trailer is not substantially used in interstate commerce during any annual registration period under the international registration plan, it shall be deemed used in Idaho and subject to the use tax under section 63-3621, Idaho Code. For the purpose of this subsection, "substantially used in interstate commerce" means that the vehicles or trailers will be part of a fleet with a minimum of ten percent (10%) of the miles operated by the fleet accrued outside of Idaho in any annual registration period under the international registration plan.

(d) The sale or purchase of a glider kit when the glider kit will be used to assemble a glider kit vehicle as defined in section 49-123, Idaho Code, which will be immediately registered under a plan defined in subsection (c) of this section, provided that if the glider kit vehicle is not substantially used in interstate commerce as defined in subsection (c) of this section during any registration period, it shall be subject to the use tax under section 63-3621, Idaho Code.

(e) The use or other consumption of a motor vehicle temporarily donated to a driver's education program sponsored by a nonprofit educational institution as defined in section 63-3622O, Idaho Code. [I.C., § 63-3622R, as added by 1984, ch. 239, § 19, p. 570; am. 1987, ch. 18, § 5, p. 23; am. 1987, ch. 326, § 3, p. 682; am. 1989, ch. 309, § 1, p. 768; am. 1990, ch. 431, § 3,

p. 1195; 1993, ch. 26, § 5, p. 87; am. 1995, ch. 54, § 5, p. 122; am. 1999, ch. 42, § 9, p. 84; am. 2001, ch. 354, § 1, p. 1241; am. 2002, ch. 60, § 1, p. 128; am. 2003, ch. 9, § 2, p. 19; am. 2003, ch. 87, § 2, p. 265; am. 2006, ch. 237, § 1, p. 721; am. 2007, ch. 111, § 2, p. 318.]

STATUTORY NOTES

Amendments. — The section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 9, § 2, substituted “annual registration period under the international registration plan” for “calendar year” in the second and third sentences in subsection (c).

The 2003 amendment, by ch. 87, § 2, re-wrote subdivision (a)(3).

The 2006 amendment, by ch. 237, in the section heading, added “and glider kits”; and added subsection (d) and redesignated former subsection (d) as (e).

The 2007 amendment, by ch. 111, in subsection (c), deleted “or similar proportional or pro

rata registration system” following the first occurrence of “international registration plan,” and substituted “the international registration plan” for “such proportional or pro rata registration system”; and in subsection (d), relocated the phrase “as defined in section 49-123, Idaho Code” following “sale or purchase of a glider kit” to follow “glider kit vehicle,” and added the proviso at the end.

Effective Dates. — Section 8 of S.L. 1987, ch. 18 declared an emergency. Approved March 2, 1987.

Section 2 of S.L. 1989, ch. 309 declared an emergency and provided that the act would become effective April 1, 1989. Approved April 3, 1989.

63-3622S. Radio and television broadcasting equipment. — There are exempted from the taxes imposed by this chapter receipts from the sale, storage, use or other consumption in this state of tangible personal property directly used and consumed in the production and broadcasting of radio and television programs when the purchase, storage, use or other consumption is by a business or segment of a business which is primarily devoted to such production and broadcasting, provided, that the use or consumption of such tangible personal property is necessary or essential to the performance of such operation. This exemption does not include machinery, equipment, materials and supplies used in a manner that is incidental to the production and broadcasting operation, such as maintenance and janitorial equipment and supplies and hand tools with a unit price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than actual production and broadcasting operation such as office equipment and supplies, equipment and supplies used in selling and distributing activities, in research, or in transportation activities; nor shall this exemption include motor vehicles or aircraft, without regard to the use to which such motor vehicles or aircraft are put. [I.C., § 63-3622S, as added by 1984, ch. 239, § 20, p. 570; am. 1987, ch. 326, § 4, p. 682; am. 1999, ch. 42, § 10, p. 84.]

63-3622T. Equipment to produce certain newspapers. — There are exempted from the taxes imposed by this chapter:

(a) Receipts from the sale, storage, use or other consumption in this state of tangible personal property directly used and consumed in the production of publications in a newspaper format which are distributed to the public at large and which rely on advertising revenue as their primary source of income; provided, that the purchase, storage, use or other consumption is by

a business or segment of a business which is primarily devoted to such production of said publications; provided, further, that the use or consumption of such tangible personal property is necessary or essential to the performance of such publication business. This exemption does not include machinery, equipment, materials and supplies used in a manner that is incidental to the production of said publications, such as maintenance and janitorial equipment and supplies and hand tools with a unit price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than the actual production of the publication and shall not include property such as office equipment and supplies, equipment and supplies used in selling and distributing activities, in research or in transportation activities; nor shall this exemption include motor vehicles or aircraft without regard to the use to which such motor vehicles or aircraft are put.

(b) Provided, further, that this exemption shall apply when the publication referred to herein is distributed to the public free of charge.

(c) Provided, further, that in order for the exemption to be applicable, at least ten percent (10%) of the total publication, computed on an average annual column inch basis, must be devoted to the publication of nonincome producing informative material. [I.C., § 63-3622T, as added by 1984, ch. 239, § 21, p. 570; am. 1987, ch. 326, § 5, p. 682; am. 1999, ch. 42, § 11, p. 84.]

63-3622U. Funeral services. — There is exempted from the taxes imposed by this chapter the sale of tangible personal property relating to funeral services by a licensed funeral establishment. [I.C., § 63-3622U, as added by 1984, ch. 239, § 22, p. 570.]

63-3622V. Bullion. — There is exempted from the taxes imposed by this chapter:

(a) The sale of precious metal bullion or the sale of monetized bullion.

(b) For purposes of this section, “precious metal bullion” means any elementary precious metal which has been put through a process of smelting or refining including, but not limited to, gold, silver, platinum, rhodium, and chromium, and which is in such state or condition that its value depends upon its contents and not upon its form.

(c) For purposes of this section, “monetized bullion” means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but shall not include coins or money sold to be manufactured into jewelry or works of art. [I.C., § 63-3622V, as added by 1984, ch. 239, § 23, p. 570.]

63-3622W. Irrigation equipment and supplies. — There are exempted from the taxes imposed by this chapter, all sales of irrigation equipment and supplies, except hand tools as defined in section 63-3622D, Idaho Code, to be used for agricultural production purposes, whether or not such equipment and supplies are to become a part of real estate and whether

or not installed by the farmer, a contractor or subcontractor. [I.C., § 63-3622W, as added by 1984, ch. 239, § 24, p. 570.]

63-3622X. Pollution control equipment. — (1) There is hereby exempted from the taxes imposed by this chapter the sale, use or purchase of tangible personal property acquired and primarily used for the purpose of meeting air or water quality standards, rules or regulations of a state or federal agency having authority to regulate and set air or water quality emission standards.

(2) The exemption provided in subsection (1) of this section applies to and includes:

(a) The purchase of dry cleaning equipment that is designed to protect employees from exposure to perchloroethylene as well as retaining the fluid in the machine in order to protect sewer systems and air quality standards. Dry cleaning machines meeting these standards are referred to as “dry to dry transfer systems”;

(b) The purchase of a liner or reagent required to meet water quality standards, rules or regulations of a state or federal agency having authority to regulate and set water quality standards regardless of whether the liner or reagent later becomes or is intended to become a component of any real property or improvement or fixture thereto;

(c) The sale, use or purchase of tangible personal property that becomes a component, fixture or improvement to realty acquired and primarily used for the purpose of meeting air or water quality emission standards, rules or regulations when purchased by:

(i) Manufacturing, mining or farming businesses that qualify for the exemption provided by section 63-3622D, Idaho Code, but not including property used to treat drinking water or to treat air or water that is not required for a production process;

(ii) Contractors working for manufacturing, mining or farming businesses that qualify for the exemption provided by section 63-3622D, Idaho Code, who purchase, use or install qualifying material at the direction of a project owner, but not including property used to treat drinking water or to treat air or water that is not required for a production process; or

(iii) Businesses principally devoted to treating and storing hazardous or toxic waste; and

(d) Tangible personal property that is necessary for the operation of property that qualifies for the exemption available in paragraph (c) of this subsection.

(3) The exemption provided in subsection (1) of this section does not apply to or include:

(a) Motor vehicles or aircraft, without regard to the use to which such motor vehicles or aircraft are put;

(b) The sale, use or purchase of fixtures, plumbing fixtures, pipe, pumps or other items used to treat or transport wastewater to a wastewater treatment plant that is owned by a wastewater operator as defined in section 54-2403, Idaho Code;

- (c) The sale, use or purchase of fixtures or tangible personal property that is used to treat or transport drinking water by a drinking water operator as defined in section 54-2403, Idaho Code;
- (d) The sale, use or purchase of property used to prevent soil erosion;
- (e) The sale, use or purchase of property that is affixed to realty and that is used in road construction or the construction of residential or commercial buildings or other improvements to realty owned by persons other than the businesses described in subsection (2)(c) of this section;
- (f) The sale, use or purchase of property used to construct buildings or structures that merely house pollution control equipment or a pollution control facility, including both building materials and construction equipment and including equipment used for excavation;
- (g) The sale, use or purchase of tangible personal property used to install pollution control equipment or facilities; or
- (h) The sale, use or purchase of tangible personal property that will become part of a septic tank or septic system. [I.C., § 63-3622X, as added by 1984, ch. 239, § 25, p. 570; am. 1987, ch. 326, § 6, p. 682; am. 1997, ch. 273, § 1, p. 798; am. 1999, ch. 42, § 12, p. 84; am. 2006, ch. 326, § 1, p. 1029; am. 2007, ch. 290, § 1, p. 825.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 326, added the third paragraph.

The 2007 amendment, by ch. 290, rewrote the section to the extent that a detailed com-

parison is impracticable.

Effective Dates. — Section 2 of S.L. 2006, ch. 326 declared an emergency retroactively to July 1, 2005 and approved March 31, 2006.

63-3622Y. Taxation of aerial passenger tramways and snowgrooming and snowmaking equipment. — There is hereby exempted from the taxes imposed in this chapter the sale, storage, use or other consumption of tangible personal property which is parts, material or equipment that will become a component of an aerial passenger tramway as defined in section 6-1102, Idaho Code, and snowgrooming and snowmaking equipment purchased and used by the owner or operator of a downhill ski area to prepare and maintain the downhill ski slopes accessed by aerial tramways. [I.C., § 63-3622Y, as added by 1995, ch. 288, § 1, p. 966.]

STATUTORY NOTES

Prior Laws. — Former § 63-3622Y, which comprised § 1 of S.L. 1990, ch. 219, and was due to expire by § 2 of S.L. 1990, ch. 219

unless reenacted, was not reenacted and therefore is deemed to have expired on July 1, 1991.

63-3622Z. Sales by Indian tribes. — (1) There is hereby exempted from the taxes imposed by this chapter sales occurring within the boundaries of an Indian reservation located in Idaho when the business or enterprise is wholly owned and operated by an Idaho Indian tribe identified in section 67-4001, Idaho Code.

(2) As used in this section the word “reservation” means lands which are:

(a) Indian lands federally declared to be reservations because they are reserved for Indian tribes by treaty between Indian tribes and any territorial governments, state government, or the United States Government; or, established by acts of the United States congress; or established by formal decision of the executive branch of the United States; or

(b) Held by an Idaho Indian tribe not holding lands which meet the definition of subsection (2)(a) of this section and are tribal lands held in trust by the United States for the use and benefit of such tribe but not placed in trust after the effective date [March 25, 1988] of this act. [I.C., § 63-3622Z, as added by 1987, ch. 18, § 4, p. 23; am. 1988, ch. 166, § 1, p. 296.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1988, ch. 166 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval and retroac-

tively to November 5, 1987.” Approved March 25, 1988.

Section 8 of S.L. 1987, ch. 18 declared an emergency. Approved March 2, 1987.

63-3622AA. Exemption for official documents. — There is hereby exempted from the taxes imposed by this chapter the sale, purchase, or use of records, transcripts, deeds, licenses, reports, and other documents for which a fee, the amount of which is set by the Idaho Code, is imposed or charged. [I.C., § 63-3622AA, as added by 1984, ch. 284, § 1, p. 657.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1984, ch. 284 declared an emergency and made the

act effective retroactively to January 1, 1984. Approved April 5, 1984.

63-3622BB. Research and development at the INEEL. — There is exempted from the taxes imposed by this chapter, the sale or use of that property primarily or directly used or consumed in connection with research, development, experimental and testing activities, when exclusively financed by the United States in connection with the Idaho national engineering and environmental laboratory and any successor thereto. [I.C., § 63-3622BB, as added by 1985, ch. 256, § 1, p. 710; am. 1998, ch. 48, § 4, p. 195.]

63-3622CC. Railroad rolling stock. — There is exempted from the taxes imposed by this chapter the sale, storage, use or other consumption of tangible personal property which is railroad rolling stock rebuilt or remanufactured in this state and which was used in interstate commerce for at least three (3) consecutive months prior to such rebuilding or remanufacturing. [I.C., § 63-3622CC, as added by 1986, ch. 180, § 2, p. 472.]

63-3622DD. Parts for railroad rolling stock. — There is exempted from the taxes imposed by this chapter the sale, storage, use or other consumption of tangible personal property which is parts, material or

equipment used to rebuild or remanufacture railroad rolling stock exempt from tax under section 63-3622CC, Idaho Code. [I.C., § 63-3622DD, as added by 1986, ch. 180, § 3, p. 472.]

63-3622EE. Purchases for the federal special supplemental food program for women, infants and children (WIC). — Commencing October 1, 1987, purchases of food pursuant to section 17 of the federal child nutrition act of 1966 and the school lunch and child nutrition amendment of 1986 are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code. [I.C., § 63-3622EE, as added by 1987, ch. 335, § 1, p. 707.]

STATUTORY NOTES

Federal References. — Section 17 of the federal child nutrition act of 1966 is codified as 42 U.S.C.S. § 1786.

The school lunch and child nutrition amendment of 1986 was P.L. 99-500, as cor-

rected by P.L. 99-591, and is codified throughout the United States Code.

Effective Dates. — Section 2 of S.L. 1987, ch. 335 provided that the act should take effect on and after October 1, 1987.

63-3622FF. Purchases made with federal food stamps. — Commencing October 1, 1987, purchases of food made with coupons issued under the federal food stamp act of 1977 and the food security act of 1985 are exempt from the taxes imposed by chapter 36, title 63, Idaho Code, and are exempt from the taxes that may be imposed on such purchases under the provisions of sections 50-1043 through 50-1049, Idaho Code. [I.C., § 63-3622FF, as added by 1987, ch. 336, § 1, p. 708.]

STATUTORY NOTES

Federal References. — The Federal Food Stamp Act of 1977 is compiled as 7 U.S.C., §§ 2012, 2014 — 2016, 2018 — 2029.

The Food Security Act of 1985 is compiled throughout Titles 7, 15, 16, 29, 42 and 46 of the U.S.C.

Effective Dates. — Section 3 of S.L. 1987, ch. 336 read: "(1) Section 1 of this act shall be in full force and effect on and after October 1, 1987, if, and only if, the Attorney General certifies to the State Tax Commission that the provisions of Section 1505 of the Food Security Act of 1985 (P.L. 99-198), requiring that a state not participate in the food stamp program if the Secretary of Agriculture of the United States determines that state or local sales taxes are collected within that state on purchases of food made with coupons, are still valid and binding.

"The Attorney General's certification required by this subsection must be made in

time to allow for implementation on October 1, 1987. If this certification is made, then Section 2 of this act shall be null and void, and of no effect, and Section 1 shall be fully effective.

"(2) Section 2 of this act shall be in full force and effect on and after October 1, 1987, if, and only if, the Attorney General certifies to the State Tax Commission and to the Department of Health and Welfare that the Secretary of Agriculture of the United States has approved such program or programs for reimbursement to food stamp recipients as indicated in Section 2.

"The Attorney's General's certification as required by this subsection must be made in time to allow for implementation on October 1, 1987. If this certification is made, then Section 1 of this act shall be null and void, and of no effect, and Section 2 shall be fully effective."

63-3622GG. Aircraft. — There is exempted from the taxes imposed by this chapter:

(1) The sale, lease, purchase, or use of aircraft primarily used to transport passengers or freight for hire. This exemption includes repair and replacement materials and parts installed in or affixed or applied to, or sold, leased or purchased to be installed in or affixed or applied to, aircraft in connection with the remodeling, repair or maintenance of such aircraft, but does not include tools and equipment utilized in performing such remodeling, repair or maintenance;

(2) The sale, lease or purchase of aircraft for use outside this state by nonresidents, even though delivery be made within this state, but only when:

(a) The aircraft will be taken from the point of delivery to a point outside this state;

(b) The aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. [I.C., § 63-3622GG as added by 1988, ch. 352, § 2, p. 1052; am. 1994, ch. 44, § 1, p. 72; am. 2001, ch. 98, § 1, p. 247; am. 2003, ch. 9, § 3, p. 19.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1988, this act shall be in full force and effect on and after April 1, 1988.” Approved April 6, 1988.
ch. 352 read: “An emergency existing therefor, which emergency is hereby declared to exist,

63-3622HH. Production exemption shall not apply to sales regarding recreation-related vehicles. — (1) Notwithstanding any other provision of law to the contrary, the production exemption provided in section 63-3622D, Idaho Code, shall not apply to sales of or repairs to snowmobiles, off-highway motorbikes, recreational vehicles, or motorcycles and all sales of snowmobiles, off-highway motorbikes, recreational vehicles or motorcycles are subject to the sales and use taxes imposed by this chapter. All repairs to snowmobiles, off-highway motorbikes, recreational vehicles or motorcycles are subject to the sales and use taxes imposed by this chapter.

(2) As used in this section, the term “snowmobile” means any self-propelled vehicle under one thousand (1,000) pounds unladen gross weight designed primarily for travel on snow or ice or over natural terrain which may be steered by tracks, skis or runners, and which is not otherwise registered or licensed under the laws of the state of Idaho.

(3) As used in this section, the term “off-highway motorbike” means any self-propelled two (2), three (3), four (4) or five (5) wheeled motorcycle or motor-driven cycle, excluding tractor, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trail bikes, motorcross bikes or dual purpose motorcycles.

(4) As used in this section, the term “recreational vehicle” means a motor home, travel trailer, truck camper or camping trailer, with or without motive power, designed for human habitation for recreational or emergency occupancy. The term recreational vehicle shall not include pickup hoods, shells, or canopies designed, created or modified for occupational usage. School buses or van type vehicles which are converted to recreational use, are

defined as recreational vehicles. Specific classes of recreational vehicles are defined as follows:

(a) The term “motor home” shall mean a vehicular unit designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle chassis. The vehicle must contain permanently installed independent life support systems which meet the american national standards institute (ANSI) A119.7 standard for recreational vehicles, and provide at least four (4) of the following facilities: cooking, refrigeration or ice box, self-contained toilet, heating and/or air conditioning, a portable water supply system, including a faucet and sink, separate 110-125 volt electrical power supply and/or LP-gas supply.

(b) The term “travel trailer” shall mean a vehicular unit, mounted on wheels designed to provide temporary living quarters for recreational, camping, travel or emergency use and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle.

(c) The term “fifth wheel trailer” shall mean a vehicular unit equipped in the same manner as a travel trailer but constructed with a raised forward section that allows a bi-level floor plan. This style is designed to be towed by a vehicle equipped with a device known as a fifth-wheel hitch, which is typically installed in the bed of a pickup truck.

(d) The term “park trailer” shall mean a trailer designed to be towed by a motorized vehicle, and of such size and weight as not to require a special highway movement permit. It is designed for seasonal or temporary living quarters and may be connected to utilities necessary for operation of installed fixtures and appliances. It is built on a single permanent chassis and constructed to permit set up by persons without special skills.

(e) The term “fold down camping trailer” shall mean a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls, which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters, for recreational, camping or travel use.

(f) The term “truck camper” shall mean a portable unit constructed to provide temporary living quarters for recreational, travel or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.

(5) As used in this section, the term “motorcycle” means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three (3) wheels in contact with the ground, but excluding a tractor. A motorcycle also is every motor scooter or motorized bicycle having an engine with less than one hundred fifty (150) cubic centimeters displacement or with five (5) brake horsepower or less.

(6) As used in this section, the term “repairs” shall include only the costs of parts, but not labor, utilized on the snowmobile, off-highway motorbike, recreational vehicle or motorcycle. [I.C., § 63-3622HH, as added by 1988, ch. 367, § 1, p. 1082; am. 1989, ch. 22, § 1, p. 25.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1989, ch. 22 declared an emergency and provided that the act should be effective April 1, 1989. Approved March 8, 1989.

63-3622II. Money-operated dispensing equipment. — There is hereby exempted from the taxes imposed by this chapter the sale or purchase of money-operated dispensing equipment which is solely consumed in dispensing a tangible product, amusement or service on which a retail sales tax is imposed or collected by the state of Idaho. As used in this section, “money-operated dispensing equipment” shall be interpreted narrowly to include only that equipment which consummates a sale by the placement of lawful money in the dispensing equipment and shall not include sales facilitating equipment such as, but not limited to, transportation, warehousing, storage, and display equipment which is consumed in the disposition of an item or product subject to the tax imposed by this chapter. [I.C., § 63-3622Y, as added by 1990, ch. 435, § 1, p. 1204; am. and redesign. 2005, ch. 25, § 120, p. 82.]

STATUTORY NOTES

Compiler's Notes. — Both S.L. 1990, ch. 219, § 1, approved April 5, 1990, effective April 5, 1990, retroactive to December 1, 1988, and S.L. 1990, ch. 435, § 1, approved April 13, 1990, effective July 1, 1990, purported to enact a new section of chapter 36, title 63, Idaho Code, designated as § 63-3622Y. Since § 63-3622Y as enacted by ch.

219, § 1 was approved first it was compiled as § 63-3622Y and the § 63-3622Y as enacted by ch. 435, § 1, was compiled as [§ 63-3622II] § 63-3622Y. The designation of the section enacted by S.L. 1990, ch. 435 was made permanent by S.L. 2005, ch 25, § 120 and § 63-3622Y, as enacted by S.L. 1990, ch. 219, § 1, expired by its own terms on July 1, 1991.

63-3622JJ. Logging exemption. — There are exempted from the taxes imposed by this chapter:

(1) The sale at retail, storage, use or other consumption in this state of tangible personal property which is primarily and directly used or consumed in logging including, but not limited to, log loaders, log jammers, log skidders and fuel used in logging trucks, provided that the use or consumption of such tangible personal property is necessary or essential to logging.

(2) The exemption allowed by subsection (1) of this section does not include machinery, equipment, materials and supplies used in a manner that is incidental to logging such as maintenance and janitorial equipment and supplies, and hand tools with a unit purchase price not in excess of one hundred dollars (\$100); nor does it include tangible personal property used in any activities other than the actual logging, such as office equipment and supplies, equipment and supplies used in selling or distributing activities or, except for fuel used in logging trucks, in transportation activities; nor shall this exemption include motor vehicles or aircraft, without regard to the use to which such motor vehicles or aircraft are put; nor shall this exemption apply to vehicles or equipment described in section 63-3622HH, Idaho Code. [I.C., § 63-3622JJ, as added by 1990, ch. 431, § 4, p. 1195; am. 1996, ch. 263, § 1, p. 864; am. 1999, ch. 42, § 13, p. 84; am. 2006, ch. 315, § 2, p. 980; am. 2007, ch. 111, § 3, p. 318.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 315, in subsection (2), deleted “nor shall this exemption include tangible personal property used to produce tangible personal property exempted from the tax under this chapter by section 63-3622G, Idaho Code” from the end.

The 2007 amendment, by ch. 111, deleted “in research” preceding “or, except for fuel used in logging trucks” in subsection (2).

Compiler’s Notes. — Both S.L. 1990, ch. 431, § 4, approved April. 12, 1990, effective July 1, 1990 and ch. 434, § 1, approved April 13, 1990, effective July 1, 1990, purported to

enact a new section of chapter 36, title 63, Idaho Code, designated as § 63-3622JJ. Since § 63-3622JJ as enacted by ch. 431, § 4 was approved first it was compiled as § 63-3622JJ and § 63-3622JJ as enacted by ch. 434, § 1 was compiled as [§ 63-3622KK] § 63-3622JJ. Subsequently § 63-3622JJ as enacted by S.L. 1990, ch. 434, § 1 was amended and redesignated as § 63-3622KK by S.L. 1996, ch. 322, § 67, effective January 1, 1997.

Effective Dates. — Section 2 of S.L. 1996, ch. 263 declared an emergency. Approved March 15, 1996.

63-3622KK. Incidental sales by religious corporations or societies. — (1) Whenever any religious corporation or society as enumerated in section 63-602B, Idaho Code, purchases tangible personal property upon which it has paid the tax imposed by this chapter, or acquires tangible personal property via gift, the sale of such property as well as any other sale defined in sections 63-3612, 67-4711 and 67-4917A, Idaho Code, by the religious corporation or society shall be exempt from the taxes imposed in this chapter, or by any political subdivision of the state. The exemption provided in this section shall be valid as long as the proceeds from the sale are used exclusively in the programs of the corporations or societies as enumerated in section 63-602B, Idaho Code. If at any time, tangible personal property or other items defined in sections 63-3612, 67-4711 and 67-4917A, Idaho Code, are offered for sale to or used by the general public in the open market in regular competition with commercial enterprise, the sale shall be subject to the taxes imposed by this chapter or by any political subdivision of the state.

(2) As used in this section:

(a) “Commerical [Commercial]” relates to or is connected with trade and traffic or commerce in general and is occupied with business or commerce.

(b) “Competition” means the effort of two (2) or more persons, as defined in section 63-3607, Idaho Code, acting independently to secure the business of a third person by the offer of the most favorable terms.

(c) “General public” means the community at large as opposed to select members of the community.

(d) “Market” means a place of commercial activity in which articles are bought and sold. [I.C., § [63-3622KK] 63-3622JJ, as added by 1990, ch. 434, § 1, p. 1203; am. 1996, ch. 322, § 67, p. 1029.]

STATUTORY NOTES

Compiler’s Notes. — This section was originally enacted as § 63-3622JJ and was compiled as [§ 63-3622KK] 63-3622JJ since S.L. 1990, ch. 431, § also enacted a § 63-

3622JJ and was approved first. However this section was subsequently amended and redesignated as § 63-3622KK by § 67 of S.L. 1996, ch. 322, effective January 1, 1997.

63-3622LL. Media measurement services exemption. — There is hereby exempted from the taxes imposed by this chapter the sale or purchase of any television measurement service, radio measurement service, newspaper measurement service or other media measurement service. [I.C., § 63-3622LL, as added by 1997, ch. 396, § 1, p. 1258.]

63-3622MM. Livestock sold at livestock markets. — (1) There are exempted from the taxes imposed by this chapter, the sale, purchase or use of livestock when sold at a livestock market.

(2) As used in this section, the term “livestock market” shall mean:

(a) A “public livestock market” as defined in section 25-1721, Idaho Code, and holding a charter issued by the Idaho department of agriculture pursuant to chapter 17, title 25, Idaho Code; and

(b) Those organizations expressly exempted from the chartering requirement by section 25-1722, Idaho Code.

(3) As used in this section, the term “livestock” shall mean cattle, calves, sheep, mules, horses, swine or goats. [I.C., § 63-362MM, as added by 2002, ch. 52, § 1, p. 119.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2002, ch. 52 declared an emergency. Approved February 28, 2002.

63-3622NN. Clean rooms. — (1) There is exempted from the taxes imposed by this chapter the sale at retail, storage, use or other consumption in this state of tangible personal property which is exclusively used in or to maintain the environment of, or is or becomes a component part of, a clean room, without regard to whether the property is actually contained within the clean room or whether such tangible personal property ultimately becomes affixed to or incorporated into real property.

(2) The following definitions apply to this section:

(a) “Clean room” means an environment in a defined space, within a larger building, where humidity, temperature, particulate matter and contamination are precisely and regularly controlled; and

(i) Which is a “Class 10,000” clean room or better, and

(ii) In which the primary activities are:

1. Activities which qualify for the production exemption in section 63-3622D, Idaho Code, resulting in the manufacture of products which are either semiconductors, products manufactured using semiconductor manufacturing processes, or equipment used to manufacture semiconductors;

2. Activities which qualify for the research and development exemption in section 63-3622RR, Idaho Code; or

3. A combination of the activities described in subparagraphs 1. and 2. above.

(b) “Class 10,000 clean room” means a specified area in which the concentration of airborne particulates of five-tenths (0.5) micrometers or

larger is regularly maintained at a level of cleanliness no greater than ten thousand (10,000) particles per cubic foot of air.

(c) "Semiconductor" means a small piece of semiconductor material including silicon:

(i) On which an integrated circuit is embedded, or

(ii) Which is altered in the manufacturing process by primarily using semiconductor processes.

(d) "Integrated circuit" means a complex of multiple active electronic components and their interconnections built upon a semiconductor substrate.

(e) "Semiconductor manufacturing processes" means chemical vapor deposition, plasma vapor deposition, wet and dry etch, chemical mechanical planarization or polishing and such other manufacturing processes generally recognized by the semiconductor industry as being standard processes in the industry.

(f) Property is "exclusively used" for a purpose when its use for any other purpose is insignificant or inconsequential. [I.C., § 63-3622NN, as added by 1999, ch. 130, § 1, p. 375; am. 2005, ch. 242, § 2, p. 752.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 242 declared an emergency. Approved April 1, 2005.

63-3622PP. Idaho commemorative silver medallions. — There is hereby exempted from the taxes imposed by this chapter the sale or purchase of Idaho commemorative silver medallions through the office of the treasurer of the state of Idaho or through agents designated by the state treasurer pursuant to the issuance of Idaho commemorative silver medallions authorized in section 67-1223, Idaho Code. [I.C., § 63-3622PP, as added by 2003, ch. 369, § 1, p. 979.]

63-3622QQ. Equipment used in alternative method of generation of electricity. [Effective until July 1, 2011.] — (1) Purchasers of machinery and equipment used directly in generating electricity using fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun or landfill gas as the principal source of power may qualify for a rebate of sales or use taxes paid on such purchases but only if the purchaser develops with such machinery, equipment, and tangible personal property a facility capable of generating not less than twenty-five (25) kilowatts of electricity.

(2) For purposes of this section:

(a) "Landfill gas" means biomass fuel of the type qualified for federal tax credits under 26 U.S.C. section 29 collected from a landfill. "Landfill" means a landfill as defined in section 39-7403, Idaho Code;

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, low impact hydro, wind, geothermal resources,

biomass, cogeneration, sun, or landfill gas as the principal source of power;

(c) "Machinery and equipment" does not include:

- (i) Hand-powered tools;
- (ii) Property with a useful life of less than one (1) year;
- (iii) Repair parts required to restore machinery and equipment to normal working order;
- (iv) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment;
- (v) Buildings; or
- (vi) Building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(d) Machinery and equipment is "used directly" in generating electricity with fuel cells or by low impact hydro, wind energy, geothermal resources, biomass, cogeneration, solar energy or landfill gas power if it provides any part of the process that captures the energy of the fuel cells, low impact hydro, wind, geothermal resources, biomass, cogeneration, sun, or landfill gas, converts that energy to electricity, and stores, transforms or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems;

(e) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst;

(f) "Low impact hydro" means an electric generating facility utilizing water for the generation of electricity, housed in existing canals or existing reservoirs and having a power production capacity twenty-five (25) kilowatts or greater.

(3) To qualify for the rebate, the taxpayer and his contractors must pay sales and use tax on their purchases of property. Once a public utility, a cooperative, a municipality or the public utilities commission certifies the project will generate at least twenty-five (25) kilowatts of electricity, the taxpayer may file a refund request with the state tax commission. The refund request shall state that the taxpayer will construct or has constructed a project that will generate sufficient kilowatts of electricity at the project site to be eligible for the rebate and that the taxpayer is entitled to receive a rebate of all sales and use taxes paid that qualifies for the rebate created by this section.

(4) Upon filing of a written refund claim by the taxpayer entitled to the rebate, and subject to such reasonable documentation and verification as the state tax commission may require, the rebate shall be paid by the state tax commission as a refund allowable under section 63-3626, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.

(5) Any rebate paid shall be subject to recapture by the state tax commission. In the event the property is not used, stored or otherwise consumed in the process of generating electricity for a period of sixty (60)

months, the state tax commission may recapture the tax paid in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(6) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in lieu of the provisions of section 63-3633, Idaho Code, the period of time within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends. [I.C., § 63-3622QQ, as added by 2005, ch. 355, § 1, p. 1123.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2005, April 12, 2005 and shall be null, void and of no ch. 355 declared an emergency. Approved force and effect on and after July 1, 2011.

63-3622RR. Research and development. — (1) There is exempted from the taxes imposed by this chapter, the lease, rental, purchase, sale at retail, storage, use or other consumption in this state of tangible personal property which is primarily used in research and development activities.

(2) "Research and development" means an activity which is:

(a) Designed to advance existing knowledge or capability in the field of science or technology, the development of new products, materials, technologies or processes, including new uses for or improvements to existing products, materials, technologies or processes; and

(b) Related to the development, design, manufacture, processing, production or fabrication of:

(i) A product or potential product which is tangible personal property; or

(ii) Machinery, materials or components utilized or potentially utilized in the development, design, manufacture, processing, production or fabrication of a product or potential product which is tangible personal property. [I.C., § 63-3622RR, as added by 2005, ch. 242, § 1, p. 752.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 242 declared an emergency. Approved April 1, 2005.

63-3622SS. Hunting or shooting sports. — There is exempted from the taxes imposed by this chapter any fees that may be charged for the use of the facility at shooting ranges or shooting competitions by nonprofit organizations or membership dues charged by nonprofit hunting or shooting sports organizations. [I.C., § 63-3622SS, as added by 2006, ch. 236, § 1, p. 720.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 2006, ch. 236 declared an emergency retroactively to July 1, 2002 and approved March 30, 2006.

63-3622TT. Media production project tax rebate. [Effective until July 1, 2011.] — (1) An eligible media production company which purchases tangible personal property used directly in a media production project and which makes qualifying media production expenditures may qualify for a rebate of sales or use taxes paid on such purchases if the purchaser develops, with such tangible personal property or qualifying media production project expenditures in Idaho, the production in Idaho of a media production project and if the purchase or use of such tangible personal property is subject to the sales and use tax. To be eligible for the rebate pursuant to this section, a media production company shall submit to the department of commerce information required by the director of the department of commerce to demonstrate conformity with the requirements of this section and shall have expended or will expend a minimum of two hundred thousand dollars (\$200,000) on qualifying media production project expenses in Idaho within a consecutive thirty-six (36) month period for each media production project. Application for the rebate shall be made within thirty-six (36) months of the expenditure qualifying for the rebate. The department of commerce shall determine eligibility of the company and shall report this information to the state tax commission in a manner and at a time upon which the department of commerce and the tax commission shall agree. The department of commerce may charge an application fee not in excess of five hundred dollars (\$500) for a media production company's application to be qualified for the sales tax rebate pursuant to this section.

(2) To receive the rebate pursuant to this section, the media production company shall apply to the state tax commission on forms and in the manner the commission requires. The application shall include a certification of the amount of expenditures made in Idaho with respect to the purchase of tangible personal property by the media production company by the director of the department of commerce or the director's designee. The rebate shall be paid within sixty (60) days from the date the tax commission receives a qualified application. If the rebate is not paid within that period, the amount owed to the taxpayer shall accrue interest at the rate provided in section 63-3045, Idaho Code.

(3) As used in this section:

(a) "Media production project" is defined as the production of a single project through a variety of techniques and media including live action camera work, animation, computer-generated imagery or other recorded work during the process of preproduction, production and postproduction, that is intended to be exhibited in theaters, licensed for exhibition on television or cable stations or networks, licensed for or produced for sale or rental to home or commercial viewing markets or a future viewing or listening medium. Products of a media production project include feature films, videos, television series or movies, industrials and education

programs or shows, video or computer games, and documentaries, but shall not include production of news and athletic event programming, political advertisements, family or personal productions, filming of live staged events to which tickets are sold or any material of an indecent or obscene nature as provided in chapter 41, title 18, Idaho Code. "Media production project" includes "preproduction," "production," and "postproduction."

(b) "Postproduction" means the final stage in a media production project after principal photography, including editing, the addition of sound/visual effects and musical scoring, mixing and dubbing and distributing.

(c) "Preproduction" means the planning stage in a media production project after the project is financed and before principal photography or actual shooting commences, including script treatment and editing/rewriting, scheduling, set design and construction, casting, budgeting and financial planning, and scouting or selection of locations.

(d) "Production" means the general process of putting a media production project together, including casting, set construction, principal photography and shooting.

(e) "Qualifying media production project expenditures" in Idaho includes, but is not limited to, wages from eleven dollars (\$11.00) per hour to one hundred twenty-five dollars (\$125) per hour, fringe benefits, commissions or fees and per diem expenses for labor paid in Idaho; contract labor paid in Idaho; equipment rentals and purchases during preproduction, production and postproduction such as grip, lighting, editing, camera, communication and computers; film, videotape stock or digital recording medium and processing and transfer costs; expendables such as gaffer's tape or gel; wardrobe and costuming; makeup and hairdressing supplies; set construction and set decoration materials, prop rentals and purchases, including lumber and construction materials, tools and equipment; stage, location site and office space rentals, equipment and expendables; vehicle, truck, boat and aircraft rentals, leases and purchases; food purchased for cast and crew; airfare or other travel purchased through an Idaho based travel agency; insurance and completion bond coverage purchased through an Idaho based agency; lodging expenses for hotels, motels, apartments and houses; motor vehicle expenses, including gas, oil, servicing and reimbursed mileage; laundry and dry cleaning; and shipping services.

(4) Any rebate paid shall be subject to recapture by the commission at one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period or in the event that the media production company did not otherwise qualify. Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act. [I.C., § 63-3622TT, as added by 2006, ch. 219, § 1, p. 654; am. 2007, ch. 360, § 24, p. 1061.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 360, throughout subsection (1) and in subsection (2), deleted “and labor” following “department of commerce.”

Effective Dates. — Section 2 of S.L. 2006, ch. 219 provides: “The provisions of this act [enacting § 63-3622TT] shall be null, void and of no force and effect on and after July 1,

2011. By January 2 of each year, the Department of Commerce and Labor shall provide an annual report of the results of all media production projects that have applied to participate in the media production project tax rebate contained in Section 63-3622TT, Idaho Code, to the Governor and the Legislature.”

63-3623. Returns and payments. — (a) The taxes imposed by this act are due and payable to the state tax commission monthly on or before the twentieth day of the succeeding month.

(b) All moneys collected or received by the state tax commission from the taxes, penalties, interest and fees imposed by this act shall be deposited with the state treasurer to be credited by him to the sales tax account created by this act.

(c) On or before the twentieth day of the month a return shall be filed with the state tax commission in such form as the state tax commission may prescribe.

(d) For the purpose of the sales tax, a return shall be filed by every seller. For the purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his duly authorized agent.

(e) For the purposes of the sales tax, the return shall show the total sales at retail subject to tax under this act during the reporting period. For the purposes of the use tax, in case of a return filed by a retailer, the return shall show the total sales price of the property sold by him, the storage, use, or consumption of which property became subject to the use tax during the reporting period; in the case of a return filed by a purchaser, the return shall show the total sales price of the property purchased by him, the storage, use, or consumption of which became subject to the use tax during the reporting period.

(f) The return shall show the amount of the taxes for the period covered by the return and such other information as the state tax commission deems necessary for the proper administration of this act.

(g) The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the state tax commission for the reporting period.

(h) The state tax commission, if it deems it necessary in order to insure payment to or facilitate the collection by the state of taxes, may require returns for periods other than monthly periods.

(i) For the purposes of the sales tax, gross amounts from rentals or leases of tangible personal property which may be subject to tax under this act shall be reported and the tax paid in accordance with such rules as the state tax commission may prescribe.

(j) The state tax commission for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount required to be paid under this act.

(k) Any person to whom an extension is granted and who pays the tax within the period for which the extension is granted shall pay, in addition to the tax, interest at the rate provided in section 63-3045, Idaho Code, from the date on which the tax would have been due without the extension until the day of payment.

(l) Upon the transfer of ownership of a motor vehicle subject to sales or use tax, a certificate of title will be issued to the new owner only upon presentation of evidence of payment of sales or use tax on the transaction.

(m) The owner of a motor vehicle or trailer required to be registered by the laws of this state shall, upon demand, furnish to the officer issuing such registration, satisfactory evidence that any sales or use tax to which such motor vehicle or trailer is subject has been paid to this state before any such registration shall be issued.

(n) Retail sales of tangible personal property through a vending machine which are taxable upon the purchase price paid by the owner or operator of the vending machine pursuant to subsection (e) of section 63-3613, Idaho Code, shall be reported upon the sales tax return of the owner or operator of the vending machine in the manner by which the tax commission may by rule prescribe. [1965, ch. 195, § 23, p. 408; am. 1966 (2nd E.S.), ch. 6, § 1, p. 17; am. 1977, ch. 36, § 2, p. 64; am. 1981, ch. 290, § 6, p. 597; am. 1983, ch. 4, § 14, p. 6; am. 1983, ch. 204, § 1, p. 555; am. 1984, ch. 285, § 1, p. 658; am. 1996, ch. 46, § 13, p. 119; am. 1999, ch. 42, § 14, p. 84.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3601.

Section 1 of S.L. 1983, ch. 4 read: "This act shall be known as 'The 1983 Idaho Emergency Fiscal Responsibility and Recovery Act.'"

Section 2 of S.L. 1984, ch. 285 read: "Notwithstanding the provisions of section 63-3623, Idaho Code, any retailer who is returning and paying sales taxes on a reporting period that begins on the 16th day of the month and ends on the 15th day of the following month, shall for the period of April 16, 1984, through April 30, 1984, return and pay the sales taxes collected during such period on or before May 20, 1984. Thereafter, sales

taxes collected on and after May 1, 1984, shall be returned and paid as provided by section 63-3623, Idaho Code."

Effective Dates. — Section 2 of 1966 (2nd E. S.), ch. 6 declared an emergency and provided that said act should take effect from and after April 1, 1966.

Subsection (4) of § 17 of S.L. 1983, ch. 4 provided that this section should take effect March 1, 1983.

Section 3 of S.L. 1984, ch. 285 declared an emergency and provided that section 2 of the act was effective April 15, 1984, and section 1 of the act was effective April 30, 1984. Approved April 6, 1984.

63-3623A. Taxes as state money. — All moneys collected by retailers in compliance with this chapter shall, immediately upon collection, be state money and every such retailer shall hold such money for the state of Idaho and for payment to the state tax commission in the manner and at the times required in this chapter. Such money shall not, for any purpose, be considered to be a part of the proceeds of the sale to which the tax relates and shall not be subject to an encumbrance, security interest, execution or seizure on account of any debt owed by the retailer to any creditor other

than the state tax commission. [I.C., § 63-3623A, as added by 1983, ch. 220, § 2, p. 613.]

63-3623B. Amusement devices. — (a) For purposes of this section the term “amusement device” shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller’s permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty-five thousand dollars (\$25,000).

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(h) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this

section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(i) Permits issued under this section are transferable to another person only after written notice of the transfer is given to the state tax commission. [I.C., § 63-3623B, as added by 1986, ch. 299, § 1, p. 748; am. 1993, ch. 26, § 6, p. 87; am. 1995, ch. 340, § 1, p. 1126; am. 1996, ch. 46, § 14, p. 119; am. 1997, ch. 62, § 6, p. 121.]

63-3624. Administration. — (a) The state tax commission shall enforce the provisions of this act and may prescribe, adopt, and enforce rules relating to the administration and enforcement of this act. The state tax commission may prescribe the extent to which any rule shall be applied without retroactive effect.

(b) The state tax commission shall employ qualified auditors for examination of taxpayers' records and books. The state tax commission shall also employ such accountants, investigators, regional supervisors, assistants, clerks, and other personnel as are necessary for the efficient administration of this act, and may delegate authority to its representatives to conduct hearings, or perform any other duties imposed by this act.

(c) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer shall keep such records, receipts, invoices and other pertinent papers as the state tax commission may require. Every such seller, retailer or person who files the returns required under this act shall keep such records for not less than four (4) years from the making of such records unless the state tax commission in writing sooner authorizes their destruction.

(d) Retail food stores may petition to the state tax commission to be relieved from the responsibility of retaining detailed invoices of nontaxed sales for which the documentation required in sections 63-3620, 63-3621, or 63-3622, Idaho Code, and any other documentation which may be required by the tax commission, has been obtained by the store from the purchaser. The tax commission shall review each petition and may examine the books and records of the petitioner to insure that the products sold by the petitioner are those sold by a retail food store. The tax commission shall give written notice of its determination to the petitioner as soon as practicable after receiving the written request, but in no event later than sixty (60) days after receiving the petition. As used in this section, "retail food stores" shall mean those retail stores primarily engaged in selling food for home preparation and consumption described in major group 54 of the standard industrial classification manual (SIC) of 1987, as amended, published by the office of management and budget of the executive office of the president of the United States.

(e) The state tax commission, or any person authorized in writing by it, may examine the books, papers, records, and equipment of any person selling tangible personal property and any person liable for the use tax and may investigate the character of the business of the person in order to verify

the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

(f) Purchasers claiming exemption from tax and retailers whose pertinent records are kept outside of the state must bring the records to Idaho for examination by the state tax commission upon request of the latter, or, by agreement with the state tax commission, permit an auditor designated by the state tax commission to visit the place where the records are kept, and there audit such records.

(g) In the administration of the use tax, the state tax commission may require the filing of reports by any person or class of persons having in his or their possession or custody information relating to sales of tangible personal property the storage, use, or other consumption of which is subject to the tax. The reports shall be filed when the state tax commission requires and shall set forth the names and addresses of purchasers of tangible personal property, the sale price of the property, the date of sale, and such other information as the state tax commission may require.

(h) When the tax commission determines that a retail sale is not exempt and the purchaser has failed to voluntarily pay sales or use tax in regard to the property or services purchased, the tax commission may collect the sales tax which was due at the time of the sale or the use tax due at the time of storage, use or other consumption of the taxable goods or services by issuing to the purchaser a notice of deficiency determination, asserting tax together with interest, at the rate provided in section 63-3045, Idaho Code, and may assert penalties found elsewhere in this chapter.

(i) If the tax commission determines that the purchaser has repeatedly or intentionally made purchases claimed to be exempt that are not exempt, and the purchaser has failed to voluntarily report and pay use tax in regard to those purchases, or the commission determines that the purchaser has repeatedly or intentionally made purchases claimed to be exempt that are not exempt and has removed the goods from this state, the commission may assert a penalty equal to five percent (5%) of the sales price of the property or two hundred dollars (\$200), whichever is greater. The tax commission may abate the penalty when the purchaser establishes during a proceeding for redetermination that there were reasonable grounds for believing that the purchase was properly exempt from tax. [1965, ch. 195, § 24, p. 408; am. 1967, ch. 290, § 8, p. 805; am. 1991, ch. 176, § 7, p. 428; am. 1992, ch. 16, § 7, p. 39; am. 1994, ch. 111, § 4, p. 244; am. 1996, ch. 46, § 15, p. 119.]

STATUTORY NOTES

Compiler's Notes. — For words “this act” see Compiler's Notes, § 63-3601.

The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

Effective Dates. — Section 11 of S.L.

1991, ch. 176 read: “This act shall be in full force and effect on and after January 1, 1992, except that the state tax commission may take such necessary actions, including the adoption of regulations and the implementation of procedures, prior to January 1, 1992, as are necessary to start to implement the provisions by not later than April 1, 1992.”

63-3625. Security for tax. — The state tax commission, whenever it deems it necessary to insure compliance with this act, may require any person subject to this act to place with it such security as it may determine. The amount of the necessary security shall be fixed by the state tax commission but, except as provided hereafter, shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this act or ten thousand dollars (\$10,000), whichever amount is the lesser. In the case of persons habitually delinquent in their obligations under this act, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this act or ten thousand dollars (\$10,000), whichever is the lesser. The amount of the security may be increased or decreased by the state tax commission at any time, subject to the limitations above set forth.

The state tax commission may sell the security at public auction or, in the case of security in the form of bearer bonds issued by the United States or the state of Idaho which have a prevailing market price, at a private sale at a price not lower than the prevailing market price if it becomes necessary to make such sale in order to recover any tax, interest or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least ten (10) days before the sale; such notice may be given personally or by mail addressed to the person at the address furnished to the state tax commission and as it appears in the records of the state tax commission. Upon such sale, any surplus above the amounts due shall be returned to the person who placed the security. [1965, ch. 195, § 25, p. 408.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3601.

The office of state tax collector has been abolished and the powers and duties trans-

ferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

63-3626. Refunds, limitations, interest. — (a) Subject to the provisions of subsection (b) of this section, if any amount due under this chapter has been overpaid, the excess amount may be credited on any amount then due to the state tax commission from the person by whom the excess was paid and any balance refunded to that person.

(b)(1) No such credit or refund shall be allowed after three (3) years from the time the payment was made to the state tax commission, unless before the expiration of such period a written claim therefor is filed with the state tax commission by the claimant or the claimant's representative, but only if the claimant has authorized in writing the representative to file a claim.

(2) For periods in regard to which the state tax commission asserts a deficiency under section 63-3629 or 63-3630, Idaho Code, a claim for refund, relating to the period to which the deficiency relates, must be made on or before the later of:

(i) The date provided in subsection (b)(1) of this section; or

- (ii) The date upon which any administrative or judicial proceeding relating to such deficiency is finally resolved; or
- (iii) The date specified in any agreement under section 63-3633(g), Idaho Code.

(3) A taxpayer claiming a refund of amounts paid in obedience to such deficiencies must do so by appealing within the time limits prescribed in sections 63-3631 and 63-3049, Idaho Code.

(c) Interest shall be allowed on the amount of such credits or refunds at the rate provided in section 63-3045, Idaho Code, from the date such tax was paid to the state tax commission.

(d) If the state tax commission denies a claim for refund in whole or in part, it shall provide notice of the denial in the manner provided in section 63-3629(c), Idaho Code. The claimant may petition the state tax commission for a redetermination of the denial as provided in section 63-3631, Idaho Code. The state tax commission shall issue a final decision pursuant to the requirements of section 63-3045B, Idaho Code. Appeal of a tax commission decision denying in whole or in part a claim for refund shall be made in accordance with and within the time limits prescribed in section 63-3049, Idaho Code. [1965, ch. 195, § 26, p. 408; am. 1970, ch. 223, § 1, p. 630; am. 1971, ch. 214, § 2, p. 936; am. 1980, ch. 11, § 1, p. 24; am. 1981, ch. 290, § 4, p. 597; am. 1991, ch. 176, § 8, p. 428; am. 1992, ch. 16, § 8, p. 39; am. 1997, ch. 62, § 7, p. 121; am. 2002, ch. 38, § 1, p. 85.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1991, ch. 176 read: "This act shall be in full force and effect on and after January 1, 1992, except that the state tax commission may take such necessary actions, including the

adoption of regulations and the implementation of procedures, prior to January 1, 1992, as are necessary to start to implement the provisions by not later than April 1, 1992."

JUDICIAL DECISIONS

Paging Service.

Based on fact that Tax Commission conducted an audit of paging service and asserted a tax deficiency pursuant to § 63-3629, paging service was entitled to an offset for

sales tax erroneously paid on pages purchased during the first four years of the audit period. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

RESEARCH REFERENCES

A.L.R. — Validity and applicability of statutory time limit concerning taxpayer's claim for state tax refund. 1 A.L.R.6th 1.

What constitutes payment for purposes of

commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments. 160 A.L.R. Fed. 137.

63-3627. Responsibility for taxes. — (a) Every person with the duty to account for and pay over any tax which is imposed upon or required to be collected by any taxpayer under this chapter on behalf of such taxpayer as an officer, member or employee of such taxpayer, shall be personally liable for payment of such tax, plus penalties and interest, if he fails to carry out his duty.

(b) Any such individual required to collect, truthfully account for, and pay over any tax imposed by this chapter who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 63-3046(b), Idaho Code, for any offense to which this subsection (b) is applicable. [1965, ch. 195, § 27, p. 408; am. 1967, ch. 290, § 9, p. 805; am. 1998, ch. 45, § 1, p. 192; am. 2003, ch. 7, § 1, p. 14.]

JUDICIAL DECISIONS

Cited in: State Tax Comm'n v. Western Electronics, Inc., 99 Idaho 226, 580 P.2d 72 (1978).

63-3628. Successors' liability. — (a) If any vendor liable for any amount under this act sells out his business or stock of goods, the vendee shall make inquiry of the state tax commission and withhold from the purchase price any amount of tax that may be due under this act until such time as the vendor produces a receipt stating that no amount is due.

(b) If the purchaser of a business or stock of goods fails to withhold from the purchase price as above required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price valued in money.

(c) The state tax commission shall, as soon as practicable after receiving written inquiry as to the amount due and no later than thirty (30) days after receipt of the inquiry or, if necessary, thirty (30) days from the date the vendor's records are made available for audit, but in any event no later than sixty (60) days after receiving the inquiry, issue a statement to the purchaser setting forth the amount of tax due by the vendor, if any. Failure of the state tax commission to issue such statement will release the purchaser from any obligation to withhold from the purchase price as above required. [1965, ch. 195, § 28, p. 408.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3601.

The office of state tax collector has been abolished and the powers and duties trans-

ferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

63-3629. Deficiency determinations. — (a) If the state tax commission is not satisfied with the return or returns of the tax, because of errors or omissions discovered in audits or in any other way, it may compute and determine the amount which is due upon the basis of facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession and assert a deficiency. One or more deficiency determinations may be made of the amount due for one or for

more than one period. In making such determination, the state tax commission may offset overpayments against amounts due.

(b) If any person fails to make a return, the state tax commission shall make an estimate of the amount of sales or use subject to tax by this act, and shall in this manner determine the amount of tax due from such person. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the state tax commission's possession or may come into its possession.

(c) The state tax commission shall give written notice of its determination and the amount of the deficiency, including any interest and penalties, to the person from whom such deficiency amount is due in the manner prescribed by section 63-3045, Idaho Code. [1965, ch. 195, § 29, p. 408; am. 1993, ch. 94, § 9, p. 224.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

JUDICIAL DECISIONS

ANALYSIS

Action for declaratory judgment.
Failure to exhaust administrative remedies.
Paging services.

Action for Declaratory Judgment.

Where the tax commission did not assess a deficiency but only indicated its intent to apply the Sales Tax Act and regulation to country club's initial membership fees and regular assessments, the country club was not required to exhaust administrative procedures of the tax commission before bringing an action for declaratory judgment. *Crane Creek Country Club v. Idaho State Tax Comm'n*, 117 Idaho 585, 790 P.2d 366 (1990).

Failure to Exhaust Administrative Remedies.

A taxpayer cannot complain of errors in computation of tax liability when it refused to

avail itself of its administrative remedies to prevent or correct such errors. *State Tax Comm'n v. Western Electronics, Inc.*, 99 Idaho 226, 580 P.2d 72 (1978).

Paging Services.

Based on fact that Tax Commission conducted an audit of paging service and asserted a tax deficiency pursuant to § 63-3629, paging service was entitled to an offset for sales tax erroneously paid on pages purchased during the first four years of the audit period. *Ryder v. Idaho State Tax Comm'n*, 130 Idaho 245, 939 P.2d 564 (1997).

63-3630. Jeopardy determinations. — If the state tax commission finds that a taxpayer is about to depart from the state of Idaho or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for the taxable period or any taxes unless such proceedings be brought without delay, the state tax commission shall thereupon make a determination of the tax or amount of tax, together with interest or penalty, required to be collected, noting that fact upon the determination. Upon giving notice and demand, the amount determined

shall be immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue [virtue] of the provisions of this section, the finding of the state tax commission, made as herein provided, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayers design.

Collection procedures may be instituted immediately. Any taxpayer deeming himself aggrieved may, within thirty (30) days of receipt of notice, petition to the state tax commission for a redetermination upon payment of the tax together with interest and penalty demanded by the assessment to the state tax commission. [1965, ch. 195, § 30, p. 408; am. 1967, ch. 290, § 10, p. 805.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has

been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

The bracketed word "virtue" was inserted by the compiler.

63-3631. Redetermination. — (1) Any person against whom a deficiency determination is made under section 63-3629, Idaho Code, or in regard to whom the state tax commission proposes to revoke or suspend a permit under section 63-3620, 63-3620A or 63-3623B, Idaho Code, or any person directly interested, may petition for a redetermination within the time period allowed by section 63-3045, Idaho Code. If a petition for redetermination is not filed within the time period allowed, the determination becomes final as provided in section 63-3045B, Idaho Code.

(2) The state tax commission may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the state tax commission at or before the hearing.

(3) A person petitioning for a redetermination under subsection (1) of this section may, in support of his petition, submit resale certificates as provided in section 63-3620 or section 63-3621, Idaho Code, or an exemption certificate as provided in section 63-3622, Idaho Code, only if such certificates are presented to the tax commission within ninety (90) days of the date of the notice of deficiency determination to which the petition relates. [1965, ch. 195, § 31, p. 408; am. 1972, ch. 7, § 1, p. 10; am. 1992, ch. 16, § 9, p. 39; am. 1993, ch. 94, § 10, p. 224; am. 1996, ch. 210, § 3, p. 679.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

JUDICIAL DECISIONS

ANALYSIS

Action for declaratory judgment.

Failure to exhaust administrative remedies.

Action for Declaratory Judgment.

Where the tax commission did not assess a deficiency but only indicated its intent to apply the sales tax act and regulation to country club's initial membership fees and regular assessments, the country club was not required to exhaust administrative procedures of the tax commission before bringing an action for declaratory judgment. *Crane Creek Country Club v. Idaho State Tax*

Comm'n, 117 Idaho 585, 790 P.2d 366 (1990).

Failure to Exhaust Administrative Remedies.

A taxpayer cannot complain of errors in computation of tax liability when it refused to avail itself of its administrative remedies to prevent or correct such errors. *State Tax Comm'n v. Western Electronics, Inc.*, 99 Idaho 226, 580 P.2d 72 (1978).

63-3632. Interest on deficiencies. — Interest upon any deficiency shall be assessed at the same time as the deficiency and shall be due and payable upon notice and demand from the state tax commission and shall be collected as a part of the tax at the rate provided in section 63-3045, Idaho Code, from the date prescribed for the payment of the tax. [1965, ch. 195, § 32, p. 408; am. 1967, ch. 290, § 11, p. 805; am. 1969, ch. 453, § 17, p. 1195; am. 1980, ch. 11, § 2, p. 24; am. 1981, ch. 290, § 5, p. 597; am. 1993, ch. 94, § 11, p. 224.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

JUDICIAL DECISIONS**ANALYSIS**

Action for declaratory judgment.

Construction with other laws.

Failure to exhaust administrative remedies.

Filing for review of redetermination.

Action for Declaratory Judgment.

Where the tax commission did not assess a deficiency but only indicated its intent to apply the sales tax act and regulation to country club's initial membership fees and regular assessments, the country club was not required to exhaust administrative procedures of the tax commission before bringing an action for declaratory judgment. *Crane Creek Country Club v. Idaho State Tax Comm'n*, 117 Idaho 585, 790 P.2d 366 (1990).

Construction With Other Laws.

This section and § 63-3049 relate to the same subject matter, review of a determination by the state tax commission, and are therefore in *pari materia*. Construing these statutes together, it was clearly the intent of the legislature to limit an appeal to the board of tax appeals from a sales and use tax determination by the tax commission to those instances where the amount in controversy is \$25,000 or less. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Where an irreconcilable inconsistency ex-

ists between statutes in *pari materia*, the latest expression of the legislature will control. Since this section had not been amended since 1981 (as of 1993), the latest expression of the legislature was the 1983 amendment imposing a jurisdictional limitation on the board of tax appeals in § 63-3049. This limitation controlled this section to the extent this section was read to allow the appeal of any amount in controversy to the board of tax appeals. *Grand Canyon Dories v. Idaho State Tax Comm'n*, 124 Idaho 1, 855 P.2d 462 (1993).

Failure to Exhaust Administrative Remedies.

A taxpayer cannot complain of errors in computation of tax liability when it refused to avail itself of its administrative remedies to prevent or correct such errors. *State Tax Comm'n v. Western Electronics, Inc.*, 99 Idaho 226, 580 P.2d 72 (1978).

Filing for Review of Redetermination.

Subsection (a) of § 63-3049 allows a taxpayer either to file an appeal with the board of

tax appeals or to file a complaint with the district court, in accordance with § 63-3049, for a review of the state tax commission's redetermination; the record was clear that taxpayer opted to file an appeal with the board within the time permitted, rather than filing a complaint with the district court; in granting taxpayer's motion for reconsideration, the district court attempted to treat

taxpayer's appeal to the board as the filing of a complaint with the district court; in effect, the district court extended the time within which taxpayer might file a complaint with the district court for a review of the commission's redetermination; the district court did not have jurisdiction to do so. *Grand Canyon Dories, Inc. v. Idaho State Tax Comm'n*, 121 Idaho 515, 826 P.2d 476 (1992).

63-3633. Period of limitation upon assessment and collection. —

Except as otherwise provided in this section:

(a) The amount of taxes imposed by this chapter shall be assessed within three (3) years after the due date of the return or the date the return was filed, whichever is the later, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of six (6) years after assessment of the tax and, provided further, that this shall not be in derogation of any of the remedies elsewhere herein provided. The running of the period of limitations provided by this section shall be suspended for the period during which the state tax commission is prohibited from making the assessment or from collecting by levy or a proceeding in court, and for thirty (30) days thereafter.

(b) In the case of a false or fraudulent return with the intent to evade tax, or a willful attempt in any manner to defeat or evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(c) In the case of taxes owed by a person who has failed to file a return as provided in section 63-3623, Idaho Code, the amount of taxes imposed in this chapter shall be assessed within seven (7) years of the time the return upon which the tax asserted to be due should have been filed.

(d) The periods of limitation upon assessment and collection provided in this section shall not apply:

(1) In cases where the facts disclose a false or fraudulent act with the intent to evade tax, or

(2) To taxes collected by a retailer, seller or any other person who has failed to pay over such taxes to the state tax commission.

(e) In the case of taxes due during the lifetime of a decedent, or by his estate during the period of administration, a notice of deficiency shall be issued, a claim shall be made, the tax shall be assessed, or any proceeding in court without assessment for the collection of such tax shall be begun, within twelve (12) months after written request for prompt action is filed with the state tax commission by the executor, administrator, or other fiduciary representing the estate of such decedent. This subsection shall not apply if the return for which the request for prompt action relates has not been filed with the state tax commission.

(f) No assessment of a deficiency with respect to the tax imposed by this chapter, and no distraint or proceedings in court for its collection shall be made, begun, or prosecuted until a notice under section 63-3629, Idaho

Code, has been mailed to the taxpayer, nor until all appeal rights relating to the deficiency have become final.

(g) Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this act, both the state tax commission or its delegate or deputy and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. [1965, ch. 195, § 33, p. 408; am. 1967, ch. 290, § 12, p. 805; am. 1972, ch. 7, § 2, p. 10; am. 1989, ch. 363, § 5, p. 909; am. 1993, ch. 26, § 7, p. 87; am. 1995, ch. 110, § 1, p. 346; am. 1997, ch. 113, § 5, p. 274; am. 1998, ch. 48, § 5, p. 195.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" in subsection (g) were added by S.L. 1989, Chapter 363, which is codified as §§ 63-3075, 63-3068, and 63-3633.

Effective Dates. — Section 3 of S.L. 1972,

ch. 7 declared an emergency and provided the act should be in full force and effect retroactively to January 1, 1972. Approved February 4, 1972.

JUDICIAL DECISIONS

Failure to File Return.

Where neither a building contractor nor a manufacturer filed a use tax return as to property used by the contractor in the construction of a sulphuric acid plant, the statute of limitations never began to run and the tax

commission's assessment was not barred even though the deficiency determination was made more than three years after the construction project began. *Leonard Constr. Co. v. State ex rel. State Tax Comm'n*, 96 Idaho 893, 539 P.2d 246 (1975).

RESEARCH REFERENCES

A.L.R. — Suspension of running of period of limitation, under 26•U.S.C.A. § 6503, for

federal tax assessment or collection. 160 A.L.R. Fed. 1.

63-3634. Additions and penalties. — The additions, penalties and requirements provided by the Idaho Income Tax Act, sections 63-3046, 63-3075, 63-3076 and 63-3077, Idaho Code, shall apply in the same manner and to the same extent to this act as to the Idaho Income Tax Act and shall cover acts, omissions, and delinquencies under this act similar to acts, omissions and delinquencies under the Idaho Income Tax Act and such additions, penalties and requirements shall, for this purpose, be described as and be for acts, omissions, delinquencies and requirements under the Idaho Sales Tax Act; provided, however, that the provisions of section 63-3076, Idaho Code, shall not prevent the release of information about a specific transaction to any party to such transaction and any individual signing an exemption claim relating to the transaction. The tax commission may release such information only when it determines that the release will benefit the enforcement of this chapter, and not otherwise. [1965, ch. 195, § 34, p. 408; am. 1991, ch. 176, § 9, p. 428; am. 1992, ch. 16, § 10, p. 39; am. 1995, ch. 54, § 6, p. 122.]

STATUTORY NOTES

Cross References. — Idaho Income Tax Act, § 63-3001 et seq.

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3601.

Effective Dates. — Section 11 of S.L. 1991, ch. 176, provided: "This act shall be in full force and effect on and after January 1, 1992, except that the state tax commission may take such necessary actions, including the adoption of regulations and the imple-

mentation of procedures, prior to January 1, 1992, as are necessary to start to implement the provisions of this act on January 1, 1992, and to fully implement the provisions by not later than April 1, 1992." Approved March 23, 1991.

Section 13 of S.L. 1992, ch. 16 declared an emergency from the approval date and retroactively to December 31, 1991. Approved March 3, 1992.

JUDICIAL DECISIONS

Willfulness.

"Willfulness" under the sales tax laws is defined as an intentional violation of a known duty. *State v. Barlow*, 113 Idaho 573, 746 P.2d 1032 (Ct. App. 1987).

In prosecution for violation of state sales tax laws, the trial court's willfulness instruction, that a good faith misunderstanding of

the law may negate willfulness, but a good faith disagreement with the law does not, taken verbatim from instructions the taxpayer then proposed, precluded a defense on the grounds that the defendant believed the sales tax statute to be unconstitutional. *State v. Barlow*, 113 Idaho 573, 746 P.2d 1032 (Ct. App. 1987).

63-3634A. Authority to enter agreements. — Notwithstanding the provisions of section 63-3634 or 63-3076, Idaho Code, relating to confidentiality, the state tax commission may enter into a written agreement with the Idaho transportation department providing for exchange of information as both the commission and the department may find necessary to implement the letter and intent of this chapter or the laws relating to the registration of motor vehicles in this state. The state tax commission is not authorized by this section to disclose any financial information from any tax return filed with the tax commission other than whether or not an individual filed a resident or nonresident return. [I.C., § 63-3634A, as added by 1988, ch. 314, § 1, p. 971.]

63-3635. Collection and enforcement. — The collection and enforcement procedures provided by the Idaho Income Tax Act, sections 63-3030A, 63-3038, 63-3039, 63-3040, 63-3042, 63-3043, 63-3044, 63-3045B, 63-3047, 63-3048, 63-3049, 63-3050 through 63-3064, 63-3065A, 63-3071 and 63-3074, Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and collection of any amounts due under this act, and said sections shall, for this purpose, be considered part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under this act, be described as sales and use tax liens and proceedings. [1965, ch. 195, § 35, p. 408; am. 1982, ch. 279, § 2, p. 710; am. 1991, ch. 2, § 5, p. 13; am. 1993, ch. 26, § 8, p. 87; am. 1995, ch. 54, § 7, p. 122; am. 1996, ch. 46, § 16, p. 119.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3601.

63-3636. Criminal penalties. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised I.C. 63-3636, as added by 1991, ch. 176, § 10, p. 428, was repealed by S.L. 1992, ch. 16, § 11.

63-3637. Actions against state of Idaho. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — This section, which comprised 1965, ch. 195, § 37, p. 408, was repealed by S.L. 1993, ch. 26, § 9, effective July 1, 1993.

63-3638. Sales tax — Distribution. — All moneys collected under this chapter, except as may otherwise be required in sections 63-3203 and 63-3709, Idaho Code, shall be distributed by the tax commission as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized under this chapter by the commission shall be paid through the state refund account, and those moneys are continuously appropriated.

(2) Five million dollars (\$5,000,000) per year is continuously appropriated and shall be distributed to the permanent building fund, provided by section 57-1108, Idaho Code.

(3) Four million eight hundred thousand dollars (\$4,800,000) per year is continuously appropriated and shall be distributed to the water pollution control account established by section 39-3605, Idaho Code.

(4) An amount equal to the sum required to be certified by the chairman of the Idaho housing and finance association to the state tax commission pursuant to section 67-6211, Idaho Code, in each year is continuously appropriated and shall be paid to any capital reserve fund, established by the Idaho housing*and finance association pursuant to section 67-6211, Idaho Code. Such amounts, if any, as may be appropriated hereunder to the capital reserve fund of the Idaho housing and finance association shall be repaid for distribution under the provisions of this section, subject to the provisions of section 67-6215, Idaho Code, by the Idaho housing and finance association, as soon as possible, from any moneys available therefor and in excess of the amounts which the association determines will keep it self-supporting.

(5) An amount equal to the sum required by the provisions of sections 63-709 and 63-717, Idaho Code, after allowance for the amount appropriated by section 63-718(3), Idaho Code, is continuously appropriated and shall be paid as provided by sections 63-709 and 63-717, Idaho Code.

(6) An amount required by the provisions of chapter 53, title 33, Idaho Code.

(7) An amount required by the provisions of chapter 87, title 67, Idaho Code.

(8) One dollar (\$1.00) on each application for certificate of title or initial application for registration of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle processed by the county assessor or the Idaho

transportation department excepting those applications in which any sales or use taxes due have been previously collected by a retailer, shall be a fee for the services of the assessor of the county or the Idaho transportation department in collecting such taxes, and shall be paid into the current expense fund of the county or state highway account established in section 40-702, Idaho Code.

(9) Eleven and five-tenths percent (11.5%) is continuously appropriated and shall be distributed to the revenue sharing account which is created in the state treasury, and the moneys in the revenue sharing account will be paid in installments each calendar quarter by the tax commission as follows:

(a) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various cities as follows:

(i) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the population of that city bears to the population of all cities within the state; and

(ii) Fifty percent (50%) of such amount shall be paid to the various cities, and each city shall be entitled to an amount in the proportion that the preceding year's market value for assessment purposes for that city bears to the preceding year's market value for assessment purposes for all cities within the state.

(b) Twenty-eight and two-tenths percent (28.2%) shall be paid to the various counties as follows:

(i) One million three hundred twenty thousand dollars (\$1,320,000) annually shall be distributed one forty-fourth ($1/44$) to each of the various counties; and

(ii) The balance of such amount shall be paid to the various counties, and each county shall be entitled to an amount in the proportion that the population of that county bears to the population of the state;

(c) Thirty-five and nine-tenths percent (35.9%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to the cities and counties as follows:

(i) Each city and county which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(c) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each city's and county's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds the amount paid in the fourth quarter of calendar year 1999, each city and county shall be entitled to a proportionately increased payment, but such increase shall not exceed one hundred five percent (105%) of the total payment made in the fourth quarter of calendar year 1999.

(iv) If the dollar amount of money available under this subsection (9)(c) in any quarter exceeds one hundred five percent (105%) of the total

payment made in the fourth quarter of calendar year 1999, any amount over and above such one hundred five percent (105%) shall be paid fifty percent (50%) to the various cities in the proportion that the population of the city bears to the population of all cities within the state, and fifty percent (50%) to the various counties in the proportion that the population of a county bears to the population of the state; and

(d) Seven and seven-tenths percent (7.7%) of the amount appropriated in this subsection (9) shall be paid to the several counties for distribution to special purpose taxing districts as follows:

(i) Each such district which received a payment under the provisions of section 63-3638(e), Idaho Code, during the fourth quarter of calendar year 1999, shall be entitled to a like amount during succeeding calendar quarters.

(ii) If the dollar amount of money available under this subsection (9)(d) in any quarter does not equal the amount paid in the fourth quarter of calendar year 1999, each special purpose taxing district's payment shall be reduced proportionately.

(iii) If the dollar amount of money available under this subsection (9)(d) in any quarter exceeds the amount distributed under paragraph (i) of this subsection (9)(d), each special purpose taxing district shall be entitled to a share of the excess based on the proportion each such district's current property tax budget bears to the sum of the current property tax budgets of all such districts in the state. The state tax commission shall calculate district current property tax budgets to include any unrecovered foregone amounts as determined under section 63-802(1)(e), Idaho Code. When a special purpose taxing district is situated in more than one (1) county, the tax commission shall determine the portion attributable to the special purpose taxing district from each county in which it is situated.

(iv) If special purpose taxing districts are consolidated, the resulting district is entitled to a base amount equal to the sum of the base amounts which were received in the last calendar quarter by each district prior to the consolidation.

(v) If a special purpose taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received.

(vi) Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection (9)(d).

(vii) For purposes of this subsection (9)(d), a special purpose taxing district is any taxing district which is not a city, a county or a school district.

(10) Amounts calculated in accordance with section 2, chapter 356, laws of 2001, for annual distribution to counties and other taxing districts beginning in October 2001 for replacement of property tax on farm machinery and equipment exempted pursuant to section 63-602EE, Idaho Code.

For nonschool districts, the state tax commission shall distribute one-fourth (1/4) of this amount certified quarterly to each county. For school districts, the state tax commission shall distribute one-fourth (1/4) of the amount certified quarterly to each school district. For nonschool districts, the county auditor shall distribute to each district within thirty (30) calendar days from receipt of moneys from the tax commission. Moneys received by each taxing district for replacement shall be utilized in the same manner and in the same proportions as revenues from property taxation. The moneys remitted to the county treasurer for replacement of property exempt from taxation pursuant to section 63-602EE, Idaho Code, may be considered by the counties and other taxing districts and budgeted at the same time, in the same manner and in the same year as revenues from taxation on personal property which these moneys replace. If taxing districts are consolidated, the resulting district is entitled to an amount equal to the sum of the amounts which were received in the last calendar quarter by each district pursuant to this subsection prior to the consolidation. If a taxing district is dissolved or disincorporated, the state tax commission shall continuously distribute to the board of county commissioners an amount equal to the last quarter's distribution prior to dissolution or disincorporation. The board of county commissioners shall determine any redistribution of moneys so received. If a taxing district annexes territory, the distribution of moneys received pursuant to this subsection shall be unaffected. Taxing districts formed after January 1, 2001, are not entitled to a payment under the provisions of this subsection. School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy minus .004 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code, provided that the result of these calculations shall not be less than zero (0). The result of these school district calculations shall be further increased by six percent (6%). For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues.

(11) Amounts necessary to pay refunds as provided in subsection (3) of section 63-3641, Idaho Code, to a developer of a retail commercial complex whose stores sell tangible personal property or taxable services subject to the sales and use tax up to an aggregate total of thirty-five million dollars (\$35,000,000) per project shall be remitted to the demonstration pilot project fund created in subsection (3) of section 63-3641, Idaho Code, and shall be specific to and accounted for by each project.

(12) Any moneys remaining over and above those necessary to meet and reserve for payments under other subsections of this section shall be distributed to the general fund. [1965, ch. 195, § 38, p. 408; am. 1967, ch. 115, § 11, p. 222; am. 1967, ch. 116, § 3, p. 229; am. 1967, ch. 377, § 2, p. 1109; am. 1970, ch. 183, § 1, p. 530; am. 1971, ch. 14, § 1, p. 25; am. 1975, ch. 155, § 1, p. 398; am. 1976, ch. 280, § 1, p. 959; am. 1977, ch. 325, § 1, p. 911; am. 1978, ch. 291, § 4, p. 713; am. 1979, ch. 254, § 14, p. 661; am. 1980, ch. 179, § 15, p. 382; am. 1980, ch. 349, § 1, p. 884; am. 1981, ch. 326,

§ 1, p. 683; am. 1984, ch. 287, § 5, p. 670; am. 1986, ch. 73, § 18, p. 201; am. 1987, ch. 31, § 4, p. 47; am. 1987, ch. 92, § 2, p. 173; am. 1994, ch. 111, § 5, p. 244; am. 1995, ch. 26, § 3, p. 33; am. 1996, ch. 253, § 32, p. 802; am. 1996, ch. 322, § 68, p. 1029; am. 1997, ch. 117, § 40, p. 298; am. 1997, ch. 242, § 2, p. 703; am. 1998, ch. 362, § 2, p. 1133; am. 1999, ch. 42, § 15, p. 84; am. 1999, ch. 328, § 2, p. 840; am. 2000, ch. 49, § 2, p. 92; am. 2000, ch. 207, § 2, p. 527; am. 2001, ch. 55, § 1, p. 97; am. 2001, ch. 130, § 3, p. 451; am. 2003, ch. 318, § 4, p. 870; am. 2004, ch. 104, § 2, p. 369; am. 2005, ch. 18, §§ 1, 2, p. 49; am. 2006, ch. 234, § 2, p. 694; am. 2006 (1st E.S.), ch. 1, § 20; am. 2007, ch. 172, § 2, p. 506.]

STATUTORY NOTES

Amendments. — This section was amended by two 1996 acts — ch. 253, § 32 effective March 14, 1996 and ch. 322, § 68, effective January 1, 1997 — which do not appear to conflict and have been compiled together.

The 1996 amendment, by ch. 253, § 32, in subdivision (d)(1) substituted “and finance association” for “agency” following “Idaho housing” each time it appears and substituted “association” for “agency” preceding “determines will keep it self-supporting.”

The 1996 amendment, by ch. 322, § 68, in subdivision (d)(2) substituted “63-709” for “63-124” in two places and in the paragraph following subdivision (e)(2) substituted “63-602W” for “63-105Y” in two places.

This section was amended by two 1997 acts — ch. 117, § 40, effective January 1, 1997 and ch. 242, § 2, effective January 1, 1998 — which do not appear to conflict and have been compiled together.

The 1997 amendment, by ch. 117, § 40, in subsection (e)(2)(i) substituted “Each year the” for “The” at the beginning, substituted “roll” for “rolls” following “property” in two places, substituted “current” for “first real and personal” following “tax charge, applicable to”, substituted “the current” for “those first real and personal” following “total current tax charges applicable to”, and substituted “property” for “ad valorem” preceding “taxation” at the end of the sentence.

The 1997 amendment, by ch. 242, § 2, in the second paragraph of subsection (e)(2) added “subsections (1) and (2) of” preceding “section 63-602W, Idaho Code” in two places.

This section was amended by two 1999 acts, ch. 42, § 15 and ch. 328, § 2, which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 42, in subdivision (f), deleted “to a motor vehicle” following “certificate of title,” and inserted “of a motor vehicle, snowmobile, all-terrain vehicle or other vehicle” following “for registration.”

The 1999 amendment, by ch. 328, added

present subdivision (d)(3).

This section was amended by two 2000 acts — ch. 49, § 2 and ch. 207, § 2, both effective July 1, 2000, which do not conflict and have been compiled together.

The 2000 amendment, by ch. 49, § 1, in subdivision (b), substituted “Five million dollars (\$5,000,000)” for “Five hundred thousand dollars (\$500,000)”, and substituted “fund” for “account”; in subdivision (e)(3), inserted “of this section” following “subsection (e)”.

The 2000 amendment, by ch. 207, § 2, rewrote this section.

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 55, § 1, in subsection (6), deleted “of this section” following “Idaho Code.”; in subsection (8), following “will be paid” inserted “in installments each calendar quarter”; in subsection (8)(b)(i), preceding “shall be distributed” inserted “annually”; added subsection (8)(d)(ii); redesignated former subsections (8)(d)(ii) through (8)(d)(vi) as present subsections (8)(d)(iii) through (8)(d)(vii).

The 2001 amendment, by ch. 130, § 3, in subsection (6) made the same exact change; added subsection (7); redesignated former subsections (7) through (9) as present subsections (8) through (10); in present subsection (9)(c), substituted “subsection (9)” for “subsection (8)”; in present subsection (9)(c)(ii), substituted “subsection (9)(c)” for “subsection (8)(c)”; in present subsection (9)(c)(iii) substituted “(9)(c)” for subsection (8)(c); in present subsection (9)(iv) substituted “subsection (9)(c)” for “subsection (8)(c)”; in present subsection (9)(d) substituted “subsection (9)” for “subsection (8)”; in present subsection (9)(d)(ii), in two places substituted “subsection (9)(d)” for “subsection (8)(d)”; and in present subsections (9)(d)(v) and (9)(d)(vi) substituted “subsection (9)(d)” for “subsection (8)(d).”

The 2006 amendment, by ch. 234, in subsection (5), inserted “after allowance for the

amount appropriated by section 63-718(3), Idaho Code" and both references to section 63-717.

The 2006 amendment, by ch. 1 (1st E.S.), effective November 1, 2006, substituted "Eleven and five-tenths percent (11.5%)" for "Thirteen and three-quarters percent (13.75%)" at the beginning of Subsection (9) and substituted "School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy minus .004 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code, provided that the result of these calculations shall not be less than zero (0). The result of these school district calculations shall be further increased by six percent (6%). For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues" for "School districts shall receive an amount determined by multiplying the sum of the year 2000 school district levy plus .001 times the market value on December 31, 2000, in the district of the property exempt from taxation pursuant to section 63-602EE, Idaho Code. For school districts, beginning January 1, 2002, only the portion of property tax replacement received to replace property exempt from taxation pursuant to section 63-602EE, Idaho Code, based on the tax year 2000 tax charges for maintenance and operation as limited by sections 33-802 2. and 33-1002D, Idaho Code, shall not be subtracted from the maximum school district maintenance and operation property taxes permitted in accordance with section 33-802 2., Idaho Code. For purposes of the limitation provided by section 63-802, Idaho Code, moneys received pursuant to this section as property tax replacement for property exempt from taxation pursuant to section 63-602EE, Idaho Code, shall be treated as property tax revenues" at the end of Subsection (10).

The 2007 amendment, by ch. 172, added subsection (11) and redesignated former subsection (11) as (12).

Compiler's Notes. — The references to section 63-3638(e) in paragraphs (9)(c)(i) and (9)(d)(i) are to that section as it read in 1999. See S.L. 1999, ch. 42, § 15 and S.L. 1999, ch. 328, § 2.

Section 10 of S.L. 2003, ch. 318, provides: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: "This act may be known and cited as the 'Property Tax Relief Act of 2006'."

Section 25 of S.L. 2006 (1st E.S.), ch. 1, provides: "The Legislature finds and declares that the issue of the property tax funding maintenance and operations of public schools is of importance to the citizens of the state of Idaho. As a representative body, members of the Legislature desire to be responsive and responsible to these citizens. For this reason, the Legislature herewith submits an advisory ballot to the electors of the state of Idaho, and the results will guide the Legislature as to whether the three-tenths of one percent property tax previously contained in Section 33-802, Idaho Code, and levied against the market value of taxable property in the school districts for maintenance and operation purposes of school districts should continue to be removed and the funds be replaced by a sufficient increase in the state sales tax.

"The Secretary of State shall have the question below placed on the 2006 general election ballot and shall take necessary steps to have the results on the question tabulated. The question shall be as follows:

"Should the State of Idaho keep the property tax relief adopted in August 2006, reducing property taxes by approximately \$260 million and protecting funding for public schools by keeping the sales tax at 6%?"

"The advisory question provided for in this act is hereby declared to be a 'measure' for purposes of Chapter 66, Title 67, Idaho Code, and the provisions of Chapter 66, Title 67, Idaho Code, shall apply thereto."

The advisory question was answered in the affirmative by the voters in the 2006 general election.

Effective Dates. — Section 5 of S.L. 1967, ch. 377 declared an emergency and provided that this amendatory act shall be in full force and effect upon its passage retroactively to January 1, 1967. Approved April 10, 1967.

Section 2 of S.L. 1970, ch. 183 declared an emergency. Approved March 13, 1970.

Section 2 of S.L. 1971, ch. 14 declared an emergency. Approved February 8, 1971.

Section 3 of S.L. 1975, ch. 155 declared an emergency. Approved March 27, 1975.

Section 2 of S.L. 1977, ch. 325 declared an emergency. Approved April 1, 1977.

Section 7 of S.L. 1978, ch. 291 declared an emergency and provided that § 4 of the act should be in full force and effect on and after its approval retroactive to January 1, 1978. Became law without governor's signature. Received by governor March 18, 1978.

Section 17 of S.L. 1979, ch. 254 declared an emergency and provided that the act should be in full force and effect retroactive to January 1, 1979.

Section 42 of S.L. 1997, ch. 117 declared an emergency and provided that §§ 1 — 40 should be in full force and effect retroactive to January 1, 1997. Approved March 15, 1997.

Section 3 of S.L. 1997, ch. 242 provided that the act should be in effect on and after January 1, 1998.

Section 4 of S.L. 1999, ch. 328 declared an emergency. Approved March 24, 1999.

Section 2 of S.L. 2001, ch. 55 declared an emergency retroactively to January 1, 2001 and approved March 19, 2001.

Section 11 of S.L. 2003, ch. 318, provides: “An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2, 3 and 10 of this act shall be in full force and effect on and after May 1, 2003; and Section 4 of this act shall be in full force and effect on

and after June 1, 2003. Sections 5, 7 and 8 of this act shall be in full force and effect on and after July 1, 2005. Sections 6 and 9 of this act shall be in full force and effect on and after August 1, 2005.”

Section 4 of S.L. 2004, ch. 104 provides: “Sections 1 and 2 of this act shall be in full force and effect on and after July 1, 2004. Section 3 of this act shall be in full force and effect on and after August 1, 2005.”

Section 3 of S.L. 2005, ch. 18 provided that Section 1 of the act should take effect on and after July 1, 2005 and Section 2 of the act should take effect on and after August 1, 2005.

Section 3 of S.L. 2006, ch. 234 declared an emergency retroactively to January 1, 2006 and approved March 30, 2006.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.
Formula for distribution.
Refund to county.

Constitutionality.

H.B. No. 243, ch. 116, 1967 Session Laws, as amended by H.B. No. 387, ch. 377, 1967 Session Laws, is not destructive of the system of county government envisioned by the Idaho Constitution, and more particularly, does not violate Art. 3, § 19, Art. 12, § 2, or Art. 18, §§ 1, 5 of the Idaho Constitution. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Appropriation to local governmental units of a percentage of “sales tax fund” was an “appropriation” within the meaning of Idaho Const., Art. 7, § 13, despite fact it was not for a specified sum, and no more, since this element of specificity is necessary only when the appropriation is made payable from the general fund; not when it is made payable from a special fund. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Since appropriation to local governmental units of percentage of sales tax fund was to be “applied by such taxing districts in the same manner and in the same proportions as revenues from ad valorem taxation” and was to be considered and budgeted against at the same time and in the same manner “as revenues from taxation on all classes of personal property which these moneys replace,” the legislature knew, or should have known, exactly for what purposes the sales tax grants were to be used; thus the requirements of the judicial interpretation of Idaho Const., Art. 7, § 13, were met. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

This section is not invalidated by Idaho Const., Art. 4, § 11, since interpretation that Art. 4, § 11 requires every appropriation to be

broken down into several items is not warranted. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Appropriation by legislature to local governmental units, of taxes derived from the “sales tax fund” was not repugnant to Idaho Const., Art. 7, § 6, since such taxes are obviously excise taxes, and by long history of judicial interpretation, prohibition in Art. 7, § 6 against legislature imposing taxes for local purposes has been limited to ad valorem or property taxes and has not been applied to excise taxes. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Where the 1998 constitutional amendments to amend Const., Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory enactments or amendments by S.L. 1999, ch. 328 were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Formula for Distribution.

The formula for distribution on a graduated basis of a portion of the sales tax fund to the counties and other taxing units therein, as provided in paragraphs (f) and (g), is merely an attempt to reimburse those taxing units for the loss of revenue resulting from the exemption in the process of business inventory ad valorem taxation phaseout; the formula is neither arbitrary nor unreasonable in view of the purposes of the formula.

Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Refund to County.

When county commissioners turned responsibility for road and bridge maintenance

over to a newly created highway district they were required to remit a share of the sales tax refund to the highway district even where the district was not in operation during the taxing year. Canyon Hwy. Dist. No. 4 v. Canyon County, 107 Idaho 995, 695 P.2d 380 (1985).

63-3638A. Sales tax on liquor to be paid to liquor account. — Notwithstanding the provisions of section 63-3638, Idaho Code, the sales tax collected on the retail sale of liquor and all other merchandise by or on behalf of the superintendent of the state liquor dispensary shall be credited directly to the liquor account, and shall not be or become a part of the sales tax account. [I.C., § 63-3638A, as added by 1982, ch. 255, § 12, p. 653; am. 1987, ch. 260, § 8, p. 545; am. 2006, ch. 18, § 7, p. 68.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 18, inserted “and all other merchandise” and “or on behalf of.”

Effective Dates. — Section 10 of S.L. 1987, ch. 260 read: “An emergency existing

therefor, which emergency is hereby declared to exist, Sections 2 and 9 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1986.”

63-3639. [Reserved.]

63-3640. Contracts entered into before effective date of increased tax. — (1) Commencing October 1, 2006, the purchase, use, storage or other consumption of tangible personal property which is otherwise subject to the taxes imposed by this chapter by persons defined in section 63-3609(a), Idaho Code, shall be exempt from one cent (1¢) of the taxes imposed by sections 63-3619 and 63-3621, Idaho Code, if:

- (a) The tangible personal property is purchased, used, stored or otherwise consumed for incorporation into real property; and
- (b) The tangible personal property is purchased, used, stored or otherwise consumed in regard to a project performed by such person pursuant to a qualified contract; and
- (c) The taxpayer claims the exemption in the manner provided by subsection (3) of this section.

(2) As used in this section, the term “qualified contract” means a contract which:

- (a) Is a written contract; and
- (b) Was in effect on September 1, 2006, or was submitted for bid or bid in written form on or before September 1, 2006, and subsequently became a written contract; and
- (c) Was negotiated or bid based upon the sales or use tax being five percent (5%); and
- (d) Requires the cost of the sales or use tax to be borne by the contractor.

(3) A person entitled to the exemption granted in subsection (1) of this section may submit a claim for refund to the state tax commission for the amount of one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, if it has actually been paid by him. The claim for refund shall include:

- (a) A copy of a written contract which is a qualified contract; and
 - (b) A detailed invoice prepared by the seller showing all items of tangible personal property purchased by the claimant, the sale of which is subject to the exemption granted in subsection (1) of this section; and
 - (c) A document signed by the purchaser certifying that the tangible personal property shown on the invoice required by subsection (3)(b) of this section has in fact been used by him on the project to which the qualified contract relates.
- (4) Upon receipt of the claim for refund, the state-tax commission shall review the claim and, if it finds it to be proper, shall pay the refund together with interest from the date that the claim was filed at the rate established by section 63-3045, Idaho Code, within thirty (30) days from the date the claim was received by the commission.
- (5) The use or incorporation into real property of any tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract other than a qualified contract shall be a misdemeanor.
- (6) In addition to the criminal penalties provided by subsection (5) of this section, the use or incorporation into real property of tangible personal property upon which the exemption provided by subsection (1) of this section has been claimed pursuant to any contract which is not a qualified contract shall subject the user to a penalty of three (3) times the sales or use tax otherwise due under this chapter to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code.
- (7) In the case of a retailer who makes sales of tangible personal property to any person entitled to the exemption granted in subsection (1) of this section who is for any reason unable to collect one cent (1¢) of the tax imposed by sections 63-3619 and 63-3621, Idaho Code, from the purchaser, the retailer shall be entitled to claim the refund otherwise available to the purchaser. The claim for refund shall be filed in the manner prescribed by subsection (3) of this section. Nothing in this subsection shall excuse the retailer from reporting sales and use taxes at the full statutory rate on all taxable sales made during the period to which his sales or use tax return relates. If a refund claim is filed concurrently with the return, the refund claimed may be credited against the tax due on the return. Any retailer who claims a refund for any taxes actually collected from the purchaser shall be subject to a penalty of three (3) times the sales or use tax refund improperly claimed to be enforced and collected as provided by sections 63-3634 and 63-3635, Idaho Code. [I.C., § 63-3640, as added by 2003, ch. 381, § 1, p. 1016; am. 2006 (1st E.S.), ch. 1, § 21.]

STATUTORY NOTES

Prior Laws. — Former 63-3640, which comprised I.C., §§ 63-3640, as added by 1986, ch. 39, §§ 1, p. 121; am. 1986, ch. 224, § 1, p. 610, was repealed by S.L. 1987, ch. 31, § 1.

Amendments. — The 2006 amendment, by ch. 1 (1st E.S.), effective August 31, 2006, substituted “Commencing October 1, 2006”

for “Commencing May 1, 2003, and ending June 30, 2005” at the beginning of Subsection (1) and substituted “September 1, 2006” for “April 15, 2003” in two places in paragraph (2)(b).

Compiler’s Notes. — Section 1 of S.L. 2006 (1st E.S.), ch. 1, provides: “This act may

be known and cited as the 'Property Tax Relief Act of 2006'."

63-3640A. Contracts entered into before effective date of increased tax. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which § 1, p. 610, was repealed by S.L. 1987, ch. 31, comprised I.C., § 63-3640A, as added by § 1. 1986, ch. 39, §§ 2, p. 121; am. 1986, ch. 224,

63-3641. Tangible personal property sold by certain retailers. —

(1) A developer of a retail commercial complex whose stores sell tangible personal property or taxable services and collected sales or use tax from customers at the location of the developer's retail commercial complex may qualify for a rebate of taxes paid on such purchases, but only if the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has built a complex in Idaho that is of a minimum cost as provided in subsection (2) of this section and has incurred costs in excess of eight million dollars (\$8,000,000) for the installation of an interchange from an interstate highway or a highway enumerated in section 40-201, Idaho Code, by the Idaho transportation department or a political subdivision or a contractor of the transportation department or political subdivision and/or freeway interchange improvements on land owned by the state of Idaho or a political subdivision and/or auxiliary lanes necessitated by the design and construction of interchanges.

(2) To qualify for the rebate, the developer of a retail commercial complex whose stores sell tangible personal property or taxable services shall have those stores collect sales and use taxes on sales of tangible personal property or taxable services from the retail commercial complex. Any improvement or alteration to a public highway must be bonded in accordance with the public contracts bond act in chapter 19, title 54, Idaho Code. Once the developer of a retail commercial complex whose stores sell tangible personal property or taxable services certifies that the retail commercial complex has cost a minimum of four million dollars (\$4,000,000) and the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has expended in excess of eight million dollars (\$8,000,000) for the installation of an interchange and/or related interchange improvements from an interstate highway by the Idaho transportation department or a political subdivision or a contractor of the transportation department or political subdivision and/or freeway interchange improvements, the developer may file with the state tax commission a refund request of sixty percent (60%) of the sales and use taxes collected for the sale of tangible personal property or taxable services from stores in the retail commercial complex. The refund request shall state that the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has constructed a retail facility that meets the minimum expenditure requirements and also meets the minimum expenditure requirements for an interchange and/or related freeway interchange improvements and/or high-

way improvements to be eligible for the rebate, and that the developer is entitled to receive a rebate of sixty percent (60%) of all sales and use taxes collected by the stores in the retail commercial complex that qualifies for the rebate created by this section. The state tax commission may require that sufficient documentation be provided by the developer of a retail commercial complex whose stores sell tangible personal property or taxable services regarding expenditures and shall require an attestation from the Idaho transportation department or a political subdivision that the minimum requirements of this section have been met. The transportation department or the political subdivision shall verify to the state tax commission the amount of expenditures the developer has expended on the interchange and/or related freeway interchange improvements and/or highway improvements.

(3) Upon filing of a written refund claim by the developer of a retail commercial complex whose stores sell tangible personal property or taxable services entitled to the rebate, and subject to such reasonable documentation and verification as the state tax commission may require, the rebate shall be paid by the state tax commission from the demonstration pilot project fund, which is hereby created in the state treasury, in a timely manner not to exceed sixty (60) calendar days after receipt as funds are available. To qualify for the rebate, stores in an eligible complex shall report their sales to the state tax commission separately from other stores they own in the state. Nothing in this section shall be deemed to hold the state of Idaho or any political subdivision liable for any and all liens filed on a project subject to rebate pursuant to this section. All sales and use tax information remitted by retailers shall be deemed a trade secret, shall be confidential and shall not be disclosed by the state tax commission. A developer of a retail commercial complex whose stores sell tangible personal property or taxable services must submit a claim for refund pursuant to this section within two (2) years of the developer's last expenditure on the interchange and/or related freeway interchange improvements and/or highway improvements. No interest shall be paid by the state on moneys refunded and all moneys refunded shall be paid from the sales tax account pursuant to subsection (11) of section 63-3638, Idaho Code, and shall be limited to a total aggregate of thirty-five million dollars (\$35,000,000) or lesser amount if that is what was expended.

(4) Once the developer of a retail commercial complex whose stores sell tangible personal property or taxable services has recouped its costs of funding the interchange and/or related freeway interchange improvements and/or highway improvements and/or related transportation infrastructure, the developer shall be ineligible to receive the rebate pursuant to this section.

(5) As used in this section:

(a) "Development of a retail commercial complex whose stores sell tangible personal property or taxable services" includes all buildings, the parking lot, sidewalks and all accessory equipment including, but not limited to, lighting and traffic signs. Retail stores in the retail commercial complex shall sell tangible personal property or taxable services that are subject to the sales and use tax.

(b) "Freeway interchange improvements" includes on and off ramps, overpass and underpass improvements and signalization to facilitate the effective access from the interstate highway system.

(c) "Highway improvements" shall be improvements or upgrades to highways enumerated in section 40-201, Idaho Code. [I.C., § 63-3641, as added by 2007, ch. 172, § 1, p. 506.]

CHAPTER 37

INTERSTATE COMPACT

SECTION.

63-3701. Multistate tax compact enacted.

63-3702. Optional reporting for sales.

63-3703. Appointment to the multistate tax commission.

63-3704. Multistate tax commission — Designation of alternate.

63-3705. Attorney general or designee to be nonvoting member.

SECTION.

63-3706. Multistate Tax Compact advisory committee — Composition — Meetings — Purpose.

63-3707. Interstate audits participation — Limitation.

63-3708. Sharing of tax information.

63-3709. Multistate tax compact account — Creation — Appropriations.

63-3701. Multistate tax compact enacted. — The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I

PURPOSES

The purposes of this compact are to:

1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II

DEFINITIONS

As used in this compact:

1. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States.

2. "Subdivision" means any governmental unit or special district of a State.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one State.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by State or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III

ELEMENTS OF INCOME TAX LAWS

Taxpayer Option, State and Local Taxes

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State or pursuant to the laws of subdivisions in two or more party States may elect to apportion and allocate his income in the manner provided by the laws of such State or by the laws of such States and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party States or subdivisions thereof or in any one or more of the party States or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from State taxes and the apportionment and allocation also may be applied to the entire tax base. In

no instance wherein Article IV is employed for all subdivisions of a State may the sum of all apportionments and allocations to subdivisions within a State be greater than the apportionment and allocation that would be assignable to that State if the apportionment or allocation were being made with respect to a State income tax.

Taxpayer Option, Short Form

2. Each party State or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the State or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the Commission, shall replace the \$100,000 figure specifically provided herein. Each party State and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV

DIVISION OF INCOME

1. As used in this Article, unless the context otherwise requires:

- (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
- (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
- (c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
- (d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.
- (e) "Nonbusiness income" means all income other than business income.

(f) “Public utility” means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line [pipeline], or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(g) “Sales” means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country or political subdivision thereof.

(i) “This State” means the State in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another State if (1) in that State he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that State has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the State does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5.(a) Net rents and royalties from real property located in this State are allocable to this State.

(b) Net rents and royalties from tangible personal property are allocable to this State: (1) if and to the extent that the property is utilized in this State, or (2) in their entirety if the taxpayer’s commercial domicile is in this State and the taxpayer is not organized under the laws of or taxable in the State in which the property is utilized.

(c) The extent of utilization of tangible personal property in a State is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the State during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental

or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the State in which the property was located at the time the rental or royalty payer obtained possession.

6.(a) Capital gains and losses from sales of real property located in this State are allocable to this State.

(b) Capital gains and losses from sales of tangible personal property are allocable to this State if (1) the property had a situs in this State at the time of the sale, or (2) the taxpayer's commercial domicile is in this State and the taxpayer is not taxable in the State in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

7. Interest and dividends are allocable to this State if the taxpayer's commercial domicile is in this State.

8.(a) Patent and copyright royalties are allocable to this State: (1) if and to the extent that the patent or copyright is utilized by the payer in this State, or (2) if and to the extent that the patent copyright is utilized by the payer in a State in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.

(b) A patent is utilized in a State to the extent that it is employed in production, fabrication, manufacturing, or other processing in the State or to the extent that a patented product is produced in the State. If the basis of receipts from patent royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the patent is utilized in the State in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a State to the extent that printing or other publication originates in the State. If the basis of receipts from copyright royalties does not permit allocation to States or if the accounting procedures do not reflect States of utilization, the copyright is utilized in the State in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this State during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if

reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this State if:

- (a) the individual's service is performed entirely within the State;
- (b) the individual's service is performed both within and without the State, but the service performed without the State, is incidental to the individual's service within the State; or
- (c) some of the service is performed in the State and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the State, or (2) the base of operations or the place from which the service is directed or controlled is not in any State in which some part of the service is performed, but the individual's residence is in this State.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this State if:

- (a) the property is delivered or shipped to a purchaser, other than the United States Government, within this State regardless of the f.o.b. point or other conditions of the sale; or
- (b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the State of the purchaser.

17. Sales, other than sales of tangible personal property, are in this State if:

- (a) the income-producing activity is performed in this State; or
- (b) the income-producing activity is performed both in and outside this State and a greater proportion of the income-producing activity is performed in this State than in any other State, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) separate accounting;
- (b) the exclusion of any one or more of the factors;
- (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or
- (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V

ELEMENTS OF SALES AND USE TAX LAWS

Tax Credit

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another State and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the State, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate State or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI

THE COMMISSION

Organization and Management

1.(a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party State who shall be the head of the State agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the State shall provide by law for the selection of the Commission member from the heads of the relevant agencies. State law may provide that a member of the Commission be represented by an alternate but only if there is on file with the Commission written notification of the designation and identity of the alternate. The Attorney General of each party State or his designee, or other counsel if the laws of the party State specifically provide, shall be entitled to attend the meetings of the Commission, but shall not vote. Such Attorneys General, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this Article.

(b) Each party State shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the Commission member from this State.

(c) Each member shall be entitled to one vote. The Commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The Commission shall adopt an official seal to be used as it may provide.

(e) The Commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its Executive Committee may determine. The Commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The Commission shall elect annually, from among its members, a Chairman, a Vice Chairman and a Treasurer. The Commission shall appoint an Executive Director who shall serve at its pleasure, and it shall fix his duties and compensation. The Executive Director shall be Secretary of the Commission. The Commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party State, the Executive Director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the Commission and shall fix their duties and compensation. The Commission bylaws shall provide for personnel policies and programs.

(h) The Commission may borrow, accept or contract for the services of personnel from any State, the United States, or any other governmental entity.

(i) The Commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The Commission may establish one or more offices for the transaction of its business.

(k) The Commission shall adopt bylaws for the conduct of its business. The Commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party States.

(l) The Commission annually shall make to the Governor and legislature of each party State a report covering its activities for the preceding year. Any donation or grant accepted by the Commission or services borrowed shall be reported in the annual report of the Commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The Commission may make additional reports as it may deem desirable.

Committees

2.(a) To assist in the conduct of its business when the full Commission is not meeting, the Commission shall have an Executive Committee of seven members, including the Chairman, Vice Chairman, Treasurer and four other members elected annually by the Commission. The Executive Committee, subject to the provisions of this compact and consistent with the policies of the Commission, shall function as provided in the bylaws of the Commission.

(b) The Commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the Commission, including problems of special interest to any party State and problems dealing with particular types of taxes.

(c) The Commission may establish such additional committees as its bylaws may provide.

Powers

3. In addition to powers conferred elsewhere in this compact, the Commission shall have power to:

(a) Study State and local tax systems and particular types of State and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of State and local tax laws with a view toward encouraging the simplification and improvement of State and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party States in implementation of the compact [compact] and taxpayers in complying with State and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance

4.(a) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for such period as may be required by the laws of that State for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party States as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party State and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the Commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The Commission shall not pledge the credit of any party State. The Commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this Article: provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under

paragraph 1(i), the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained in this Article shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

ARTICLE VII

UNIFORM REGULATIONS AND FORMS

1. Whenever any two or more party States, or subdivisions of party States, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the Commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The Commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the Commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party States and subdivisions thereof and to all taxpayers and other persons who have made timely request of the Commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party States and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the Commission.

3. The Commission shall submit any regulations adopted by it to the appropriate officials of all party States and subdivisions to which they might apply. Each such State and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII

INTERSTATE AUDITS

1. This Article shall be in force only in those party States that specifically provide therefor by statute.

2. Any party State or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may

request the Commission to perform the audit on its behalf. In responding to the request, the Commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The Commission may enter into agreements with party States or their subdivisions for assistance in performance of the audit. The Commission shall make charges, to be paid by the State or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The Commission may require the attendance of any person within the State where it is conducting an audit or part thereof at a time and place fixed by it within such State for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the Commission within the State of which he is a resident: provided that such State has adopted this Article.

4. The Commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the Commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the State or subdivision on behalf of which the audit is being made or a court in the State in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a State that has adopted this Article.

5. The Commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the Commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party States or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the Commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party States, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the States or subdivisions on whose account the Commission performs the audit, and only through the appropriate agencies or officers of such States or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party States or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the Commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX

ARBITRATION

1. Whenever the Commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The Commission shall select and maintain an Arbitration Panel composed of officers and employees of State and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party State or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the Commission and to each party State or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the State or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party States or subdivisions thereof. Each party State and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The Arbitration Board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the Commission's Arbitration Panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the Arbitration Panel. The two persons selected for the Board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the Board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the Arbitration Panel. No member of a Board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The Board may sit in any State or subdivision party to the proceeding, in the State of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The Board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The Board shall act by majority vote.

7. The Board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the Board. In case of failure to obey a subpoena, and upon application by the Board, any judge of a court of competent jurisdiction of the State in which the Board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in States that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the Board in such manner as it may determine. The Commission shall fix a schedule of compensation for members of Arbitration Boards and of other allowable expenses and costs. No officer or employee of a State or local government who serves as a member of a Board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such Board member shall be entitled to expenses.

9. The Board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the Board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The Board shall file with the Commission and with each tax agency represented in the proceeding: the determination of the Board; the Board's written statement of its reasons therefor; the record of the Board's proceedings; and any other documents required by the arbitration rules of the Commission to be filed.

11. The Commission shall publish the determinations of Boards together with the statements of the reasons therefor.

12. The Commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party States.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

ARTICLE X

ENTRY INTO FORCE AND WITHDRAWAL

1. This compact shall enter into force when enacted into law by any seven States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof. The Commission shall arrange for notification of all party States whenever there is a new enactment of the compact.

2. Any party State may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already in-

curred by or chargeable to a party State prior to the time of such withdrawal.

3. No proceeding commenced before an Arbitration Board prior to the withdrawal of a State and to which the withdrawing State or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the Board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI

AFFECT [EFFECT] ON OTHER LAWS AND JURISDICTION

Nothing in this compact shall be construed to:

(a) Affect the power of any State or subdivision thereof to fix rates of taxation, except that a party State shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the Commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any State or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating therein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters. [1967, ch. 316, § 1, p. 928.]

STATUTORY NOTES

Compiler's Notes. — The bracketed words "compact" in Article VI and "Effect" in Article XI were inserted by the compiler.

JUDICIAL DECISIONS

Validity of Compact.

The multistate tax compact does not impermissibly enhance state power at the expense of federal authority, and, therefore, the congressional approval requirements of U.S. Const., Art. 1, § 10, cl. 3 are inapplicable and the compact is valid without such approval; moreover, instances of unlawful enforcement of the compact, while they might amount to

violations of U.S. Const., Amend. 14, are irrelevant to the facial validity of the compact. *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

Cited in: *American Smelting & Ref. Co. v. Idaho State Tax Comm'n*, 99 Idaho 924, 592 P.2d 39 (1979).

63-3702. Optional reporting for sales. — Every multistate taxpayer as defined in said Compact and required to file a return in Idaho whose only activities within Idaho consist of sales and which does not own or rent real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within this state is not in excess of the dollar volume prescribed in article III, section 2, of the Multistate Tax Compact may elect to report its income and pay tax to the state of Idaho at the rate of one per cent (1%) of such dollar volume. [1967, ch. 316, § 2, p. 928; am. 1969, ch. 301, § 1, p. 903.]

STATUTORY NOTES

Compiler's Notes. — The provisions of Article III, Section 2 of the Multistate Tax Compact are compiled in § 63-3701.

63-3703. Appointment to the multistate tax commission. — The governor, with the advise [advice] and consent of the senate, shall appoint a member of the Multistate Tax Commission to represent Idaho from among the persons made eligible by Article VI, Section 1 (a) of the Multistate Tax Compact. [1967, ch. 316, § 3, p. 928.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "advise" was inserted by the compiler. the Multistate Tax Compact are compiled in § 63-3701.

The provisions of Article VI, Section 1 (a) of

63-3704. Multistate tax commission — Designation of alternate. — The member representing Idaho on the multistate tax commission may be represented thereon by an alternate designated by him. The name of the alternate thus designated shall be filed with the multistate tax commission by the member representing this state. [1967, ch. 316, § 4, p. 928.]

63-3705. Attorney general or designee to be nonvoting member. — The attorney general of this state or his designee shall be a nonvoting member of said commission representing this state. [1967, ch. 316, § 5, p. 928.]

63-3706. Multistate Tax Compact advisory committee — Composition — Meetings — Purpose. — There is hereby established the

Multistate Tax Compact advisory committee composed of the member of the multistate tax commission representing this state, any alternate designated by him, the attorney general or his designee, two members of the senate appointed by the lieutenant governor, and two members of the house of representatives appointed by the speaker thereof. The chairman shall be the member of the commission representing this state. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than once in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission as raised by any of its members. [1967, ch. 316, § 6, p. 928.]

63-3707. Interstate audits participation — Limitation. — This state specifically adopts and agrees to participate in the interstate audits provided by article VIII of the Multistate Tax Compact and said article shall be in full force and effect in respect to this state; providing that the state tax commission shall determine the extent of participation by this state in such interstate audits. [1967, ch. 316, § 7, p. 928.]

STATUTORY NOTES

Compiler's Notes. — The office of state tax collector has been abolished and the powers and duties transferred to the state tax commission and the name tax collector has been changed to state tax commission on the authority of S.L. 1967, ch. 125, § 7.

The provisions of Article VIII of the

Multistate Tax Compact are compiled in § 63-3701.

Effective Dates. — Section 9 of S.L. 1967, ch. 316 as amended by S.L. 1968 (2nd Ex. Sess.), ch. 1, § 1 and 1968 (2nd Ex. Sess.), ch. 24, § 1, read: "This act shall be in full force and effect upon its adoption by seven states."

JUDICIAL DECISIONS

Cited in: American Smelting & Ref. Co. v. Idaho State Tax Comm'n, 99 Idaho 924, 592 P.2d 39 (1979).

63-3708. Sharing of tax information. — The state tax commission at its discretion may furnish to the multistate tax commission, any information contained in tax returns and reports and related schedules and documents filed pursuant to the laws of this state and in the report of an audit or investigation made with respect thereto, provided only that said information be furnished solely for tax purposes; and the multistate tax commission may make said information available to the tax officials of any other state, the District of Columbia, the United States and its territories for tax purposes. [I.C., § 63-3708, as added by 1973, ch. 81, § 1, p. 130.]

63-3709. Multistate tax compact account — Creation — Appropriations. — (a) There is hereby created in the office of the state treasurer and subject to his control and custody in the state operating fund an account to be known and designated as the "Multistate Tax Compact Account."

(b) All moneys collected as a direct result of audits or compliance activities conducted by the multistate tax commission or by employees of the

state tax commission whose salaries are appropriated from the multistate tax compact account shall be paid by the state tax commission into the multistate tax compact account.

(c) Upon receipt by the state tax commission of the budget of the multistate tax commission, and the statement of Idaho's share of such budget to be appropriated, the state tax commission shall review said budget and Idaho's share, and shall determine compliance or noncompliance of said budget and share with section 4(b) of article VI of the multistate tax compact. Upon reviewing said budget and Idaho's share thereof, the state tax commission shall, on or before February 1 of each year, certify to the Senate finance committee, the House appropriations committee, the Senate local government and taxation committee, and the House revenue and taxation committee, that the budget and Idaho's share thereof either comply or do not comply with the provisions of section 4(b) of article VI of the multistate tax compact. Unless the legislature determines otherwise prior to adjournment, the amounts which the state tax commission has certified as complying with section 4(b) of article VI are hereby continually appropriated from the multistate tax compact account to the multistate tax commission.

(d) If, at any time, the funds in the multistate tax compact account exceed one hundred and ten percent (110%) of the most recent continuing annual appropriation to the multistate tax commission, the excess thereof shall be transferred to the general account.

(e) Payments to the multistate tax commission from the multistate tax compact account shall be made only with the approval of the state tax commission. [I.C., § 63-3709, as added by 1980, ch. 115, § 1, p. 253; am. 1999, ch. 26, § 1, p. 37.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1999, ch. 26 declared an emergency retroactively to July 1, 1998 and approved February 25, 1999.

CHAPTER 38

BOARD OF TAX APPEALS

SECTION.

- 63-3801. Establishment.
- 63-3802. Members.
- 63-3803. Terms — Election of chairman.
- 63-3804. Compensation.
- 63-3805. Removal.
- 63-3806. Appointment of employees.
- 63-3807. Meetings — Call for hearings —
Office — Quorum.
- 63-3808. Adoption of rules and issuance of
subpoenas.
- 63-3809. Hearings — Matter considered by

SECTION.

- board to be of public importance.
- 63-3810. Motion for rehearing — Rehearing
by entire board.
- 63-3811. Appeal from determination of tax
liability.
- 63-3812. Appeal from board — Payment of
taxes while on appeal.
- 63-3813. Conclusive decision.
- 63-3814. Proceedings to conform with admin-
istrative procedure act.
- 63-3815 — 63-3820. [Repealed.]

63-3801. Establishment. — Within the department of revenue and taxation, there is hereby established a board of tax appeals as an independent body which shall not in any way be subject to the supervision or control of the state tax commission. [1969, ch. 453, § 1, p. 1195; am. 1974, ch. 19, § 11, p. 524.]

STATUTORY NOTES

Cross References. — Department of revenue, § 63-501 et seq. 1974, ch. 19 provided that the act should take effect on and after July 1, 1974.

Effective Dates. — Section 12 of S.L.

63-3802. Members. — The board of tax appeals shall consist of three (3) members appointed by the governor with the advice and consent of the senate. The members shall be residents of this state and shall be selected on the basis of their knowledge of and experience in taxation, gained from service as certified public accountants, public accountants, licensed real estate brokers, attorneys, duly accredited property appraisers, or in some other manner. No more than two (2) members of the board shall be members of the same political party. No member of the board shall hold any elective office or any public office involving assessment of taxes or administration of any of the tax laws of this state. No member shall take part directly or indirectly in any election campaign on behalf of any political party or organization or candidate or any measure to be voted upon by the people. Nothing in this act shall prohibit a person from properly and lawfully engaging in his business or profession. In any matter, in which a member might, directly or indirectly, encounter a possible conflict of interest, he shall disqualify himself from making any necessary decisions. [1969, ch. 453, § 2, p. 1195.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1969, ch. 453, compiled as §§ 63-3049, 63-3632, and 63-3801 — 63-3814.

63-3803. Terms — Election of chairman. — Of the members first appointed, one (1) shall be appointed for a term to expire on June 30, 1970; one (1) for a term to expire on June 30, 1971; and one (1) for a term to expire on June 30, 1972. Succeeding members shall be appointed for three (3) year terms. Any vacancy shall be filled by the governor for the unexpired term subject to confirmation by the senate at its next regular session. The board shall elect a chairman from its membership and the chairman shall hold office until the first regular meeting of the subsequent fiscal year. [1969, ch. 453, § 3, p. 1195.]

JUDICIAL DECISIONS

Cited in: Woodward v. Board of Equalization, 114 Idaho 882, 761 P.2d 1234 (Ct. App. 1988).

63-3804. Compensation. — Each member of the board shall be compensated in the amount of two hundred dollars (\$200) per day and shall be reimbursed for actual and necessary expenses, subject to the limits provided in section 67-2008, Idaho Code. [1969, ch. 453, § 4, p. 1195; am. 1980, ch. 247, § 79, p. 582; am. 1982, ch. 355, § 1, p. 904; am. 1998, ch. 233, § 1, p. 790.]

63-3805. Removal. — The governor may remove any member of the board of tax appeals for cause. [1969, ch. 453, § 5, p. 1195.]

63-3806. Appointment of employees. — The board shall appoint a clerk and such other employees as it deems necessary to carry out its duties and may employ counsel. [1969, ch. 453, § 6, p. 1195.]

63-3807. Meetings — Call for hearings — Office — Quorum. — The first board shall meet within thirty (30) days after its appointment to organize. The board shall meet annually at the state capitol at a date to be determined by the board and shall hold hearings and meetings at the call of the chairman or a majority of the board. The principal office of the board shall be in Ada county, but the board or any of its members may sit and hold hearings at any other place within the state. A majority of the board shall constitute a quorum for the transaction of any official business other than the conduct of hearings and the board may act even though one (1) position on the board is vacant. [1969, ch. 453, § 7, p. 1195; am. 2001, ch. 183, § 30, p. 613.]

63-3808. Adoption of rules and issuance of subpoenas. — The board shall adopt and publish such rules and regulations as may be necessary to carry out its duties and amplify the procedural structure set out in this act and chapter 52, title 67, Idaho Code.

The board and each member shall have power to issue subpoenas requiring the attendance of witnesses and the production of documentary evidence in the like manner and to the same extent as courts of record. The process issued shall extend to all parts of the state and may be served by any person authorized to serve process of courts of record. The subpoena shall state the name of the board, the title of the action, and shall command each person to whom it is directed to attend and give testimony and produce the books, papers, documents, or tangible things designated therein at the time and place therein specified.

Each witness who shall appear by order of the board or a member shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness was subpoenaed. If any witness shall fail to properly respond to a subpoena, the board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the board alleges that the witness failed to respond. The court shall enter an order directing the witness to appear before the court at a time and place

fixed by the court, not less than five (5) days from the service of such order on the witness, to show cause why he has not attended and testified or produced the documentary evidence before the board. If it shall appear to the court that the subpoena was regularly issued by the board or a member and regularly served, the court shall thereupon enter an order that the witness appear before the board at the time and place fixed in the order to testify or produce the required documentary evidence, and upon failure to obey that order, the witness shall be dealt with for contempt of court. [1969, ch. 453, § 8, p. 1195; am. 1973, ch. 116, § 1, p. 217.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3802.

JUDICIAL DECISIONS

Discretion of Board.

Absent a showing of prejudice or due process violation, the board should be left the

interpretation and application of its own rules. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

63-3809. Hearings — Matter considered by board to be of public importance. — Hearing assignments will be made by the chairman.

(1) A hearing will be conducted and a recommended decision rendered by a hearing officer or by one (1) member of the board. The recommended decision shall become final when signed by at least two (2) board members.

(2) If the recommended decision fails to gain the signature of two (2) members, the chairman shall direct that a substitute recommended decision be drafted for submission to board members and which shall become final upon the signature of two (2) or more members.

(3) Prior to a final decision being rendered, if, in the opinion of one (1) or more members of the board, a matter is of sufficient importance to the public, it may be certified for consideration by the entire board either at a hearing or upon a transcript of a hearing held by one (1) of its members and recorded in any suitable manner.

(4) Following the filing of a timely notice of appeal to the board of tax appeals for a property tax appeal hearing, a hearing will be set, conducted and a decision shall be rendered no later than May 1. An appeal hearing may be delayed or continued upon written agreement of all parties. [1969, ch. 453, § 9, p. 1195; am. 1998, ch. 226, § 1, p. 775; am. 1999, ch. 107, § 2, p. 334.]

63-3810. Motion for rehearing — Rehearing by entire board. — A party adversely affected by a decision may move for rehearing if such motion is filed within ten (10) days of the time the decision of the board is mailed to him. If requested in the motion, the matter may be determined by the entire board of tax appeals. If a rehearing by the entire board is requested, it will be conducted at a regular meeting in Boise or a meeting convened for that purpose in Ada county or such other place as may be designated by the chairman. [1969, ch. 453, § 10, p. 1195; am. 2001, ch. 183, § 31, p. 613.]

63-3811. Appeal from determination of tax liability. — Taxpayers may, within the period herein provided and by following the procedures herein required, appeal to the board of tax appeals from a final determination of any tax liability, including those pursuant to sections 63-501, 63-511 and 63-3049, Idaho Code. [1969, ch. 453, § 11, p. 1195; am. 1983, ch. 231, § 2, p. 634; am. 1996, ch. 322, § 69, p. 1029; am. 2004, ch. 94, § 1, p. 339.]

STATUTORY NOTES

Compiler's Notes. — Section 4 of S.L. 1983, ch. 231 read: "All cases appealed to the district court on or after the effective date of

this act shall be reviewed by the district court as provided in this act."

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Equalization of assessments.

In general.

Legislative intent.

Constitutionality.

The 1944 amendment to Const., Art. 7, § 12, creating the state tax commission, merely directed it to continue to perform the statutory duties imposed upon its predecessor and, in addition, gave it the constitutional duty of "supervision and coordination of the work of the several county boards of equalization"; consequently, the tax commission's duty to conduct statewide assessments of the railroads' operating properties is statutory in nature and not constitutional. Since the legislature has plenary power in all matters of legislation except as prohibited or limited by the Constitution, it is free to amend or repeal its enactments and there are no provisions in the Constitution prohibiting it from creating a board of tax appeals empowered to review the tax commission's assessments of railroads' operating property; accordingly, the legislative authorization that the board of tax appeals has the power to review the tax commission's assessments of railroads' operating properties is not prohibited by the Constitution. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Equalization of Assessments.

While the legislature in this section has made specific provision for appeal by taxpayers or county assessors to the board of tax appeals from determination of ad valorem taxes, the legislature has made no provision for an appeal to be taken from the decision of the state tax commission in equalizing assess-

ments made pursuant to § 63-605 et seq. Therefore, it is apparent that the legislature did not contemplate that the action of the state tax commission in equalizing assessments would be subject to review by either the district courts or by the board of tax appeals. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

In General.

Section 63-3812 and this section are clearly statutes in *pari materia*, the former governing appeals to the board of tax appeals, and the latter governing appeals from the board. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Legislative Intent.

This section expressly authorizes county assessors to appeal to the board of tax appeals from determinations of the state tax commission as to valuations of property made on a statewide basis; it would be incongruous for the legislature to have intended that one party to a valuation controversy (an assessor) should be allowed an appeal to the board of tax appeals, but the other party to the controversy (the railroads) could not appeal to the board of tax appeals. The legislature intended this section to be the remedy whereby taxpayers such as the railroads may obtain a review of the commission determination of the valuation of operating property. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

63-3812. Appeal from board — Payment of taxes while on appeal. — Whenever any taxpayer, assessor, the state tax commission or any other

party appearing before the board of tax appeals is aggrieved by a decision of the board of tax appeals or a decision on a motion for rehearing, an appeal may be taken to the district court located in the county of residence of the affected taxpayer, or to the district court in and for the county in which property affected by an assessment is located.

(a) The appeal shall be taken and perfected in accordance with rule 84 of the Idaho rules of civil procedure.

(b) Any record made in such matter together with the record of all proceedings shall be filed by the clerk with the district court of the proper county.

(c) Appeals may be based upon any issue presented by the appellant to the board of tax appeals and shall be heard and determined by the court without a jury in a trial de novo on the issues in the same manner as though it were an original proceeding in that court. The burden of proof shall fall upon the party seeking affirmative relief to establish that the decision made by the board of tax appeals is erroneous. A preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation. The court shall render its decision in writing, including therein a concise statement of the facts found by the court and conclusions of law reached by the court. The court may affirm, reverse or modify the order, direct the tax collector of the county or the state tax commission to refund any taxes found in such appeal to be erroneously or illegally assessed or collected or may direct the collection of additional taxes in proper cases.

(d) Nothing in this section shall be construed to suspend the payment of taxes pending any appeal, except that any privileges as to bonds or other rights extended by the provisions of chapters 30 and 36, title 63, Idaho Code, shall not be affected. Payment of taxes while an appeal hereunder is pending shall not operate to waive the right to an appeal.

(e) Any final order of the district court under this section shall be subject to appeal to the supreme court in the manner provided by law. [1969, ch. 453, § 12, p. 1195; am. 1983, ch. 231, § 3, p. 634; am. 1993, ch. 94, § 12, p. 224; am. 1993, ch. 290, § 1, p. 1081; am. 2000, ch. 6, § 1, p. 9; am. 2003, ch. 266, § 4, p. 703; am. 2004, ch. 95, § 1, p. 339.]

STATUTORY NOTES

Amendments. — This section was amended by two 1993 acts — ch. 94, § 12, effective January 1, 1994, and ch. 290, § 1, effective July 1, 1993 — which do not appear to conflict and have been compiled together.

The 1993 amendment, by ch. 94, § 12, near the middle of subdivision (a) substituted “twenty-eight (28)” for “thirty (30)” preceding “days after copy”.

The 1993 amendment, by ch. 290, § 1, in the first sentence of subdivision (c) added “may be based upon any issue presented by the appellant to the board of tax appeals and” following “Appeals”; and added at the end of

the first sentence of subdivision (c) “in the same manner as though it were an original proceeding in that court”.

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: “Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993.”

Section 5 of S.L. 2003, ch. 266 declared an emergency. Approved April 8, 2003.

JUDICIAL DECISIONS

ANALYSIS

Administrative remedy process.

Jury trial.

Legislative intent.

—Standard of review.

—Substantial evidence review.

Trial de novo.

Valuation presumed correct.

Administrative Remedy Process.

Where taxpayer alleged excessive assessments on his personal property arising from the assessor's application of rates different from rates at which other property in the county was assessed, taxpayer's claim had to be pursued through the statutory administrative process provided for in this title prior to his seeking relief in the district court by way of a declaratory judgment or refund. *V-1 Oil Co. v. County of Bannock*, 97 Idaho 807, 554 P.2d 1304 (1976).

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review; however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case the district court does not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. *Fairway Dev. Co. v. Bannock County*, 119 Idaho 121, 804 P.2d 294 (1990).

Jury Trial.

The district court did not err in denying a jury trial in action by taxpayers challenging contract between county and appraiser and seeking a county wide tax rollback and refund, since there was no constitutional or statutory basis for right to jury trial in such an action. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

Legislative Intent.

This section specifically provides for appeals from decisions by the board to the district court "in the case of a taxpayer whose taxes are assessed on a statewide basis." That language clearly indicates a legislative contemplation that such a taxpayer "assessed on a statewide basis" should be first able to appeal to the board of tax appeals from a

statewide evaluation by the tax commission; otherwise the statutory language is totally superfluous. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

—Standard of Review.

Supreme court of Idaho articulated an incorrect standard of review in *Roeder Holsings, L.L.C. v. Bd. of Equalization of Ada County*, 136 Idaho 809, 41 P.3d 237 (2001) when it held that it will review an agency decision independently of the district court's appellate decision; as indicated in I.R.C.P. 84, and § 63-3812(c), this standard of review is improper where the district court conducts a trial de novo on the appeal from the agency's decision. *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 108 P.3d 349 (2005).

—Substantial Evidence Review.

Proper standard of review in an appeal from a district court's trial de novo of a decision from the Idaho tax commission is substantial evidence and not on the record of the agency action. *Idaho Power Co. v. Idaho State Tax Comm'n*, 141 Idaho 316, 109 P.3d 170 (2005).

Trial De Novo.

In an appeal from a decision of the board of tax appeals, district court did not err by allowing the counties to present de novo evidence of valuation. *Canyon County Bd. of Equalization v. Amalgamated Sugar Co., LLC*, — Idaho —, 137 P.3d 445 (2006).

Valuation Presumed Correct.

In a challenge to the assessor's valuation of property, the value of property for purposes of taxation as determined by the assessor is presumed to be correct; and the burden of proof is upon the taxpayer to show by clear and convincing evidence that he is entitled to the relief claimed. *Merris v. Ada County*, 100 Idaho 59, 593 P.2d 394 (1979).

Cited in: *Idaho State Tax Comm'n v. Stang*, 135 Idaho 800, 25 P.3d 113 (2001); *Mitchell v. Bd. of Equalization*, 138 Idaho 52, 57 P.3d 763 (2002); *Student Loan Fund of Idaho, Inc. v. Payette County*, 138 Idaho 684, 69 P.3d 104 (2003).

63-3813. Conclusive decision. — In all cases which are not appealed to the district court within the prescribed time, the decision of the board of

tax appeals shall be conclusive and all records shall be corrected to comply with the decision of the board. A final decision or order of the board of tax appeals directing a market value change for taxable property that is not further appealed shall be fixed for the current year appealed and there shall be no increase in value for the subsequent assessment year when no physical change occurs to the property; provided however, that annual trending or equalization applied to all properties of a property class or category within the county or a clearly defined area shall still apply. If the order requires repayment or refund of taxes these shall be repaid or refunded by the proper authorities and, if the order affirms or establishes a liability for the payment of taxes, the usual procedure for collection of such taxes shall continue or commence. [1969, ch. 453, § 13, p. 1195; am. 2002, ch. 332, § 1, p. 938.]

STATUTORY NOTES

Compiler's Notes. — Section 14 of S.L. 1969, ch. 453, read: "No appeals filed prior to the effective date of this act shall be affected by its provisions and these matters shall be heard and determined pursuant to the statutes formerly applicable to such proceedings. No appeals from matters involving assess-

ments of property made prior to the effective date of this act shall be filed under this act. Such appeals shall be heard and determined in the manner now provided."

Effective Dates. — Section 2 of S.L. 2002, ch. 332 declared an emergency. Approved March 27, 2002.

JUDICIAL DECISIONS

Cited in: Woodward v. Board of Equalization, 114 Idaho 882, 761 P.2d 1234 (Ct. App. 1988).

63-3814. Proceedings to conform with administrative procedure act. — The proceedings of the board shall be conducted in conformity with the administrative procedure act set out in chapter 52, title 67, of the Idaho Code, except insofar as this act is inconsistent therewith. [1969, ch. 453, § 15, p. 1195.]

STATUTORY NOTES

Compiler's Notes. — For words "this act" see Compiler's Notes, § 63-3802.

63-3815 — 63-3820. Small claims division of board of tax appeals — Jurisdiction; Method of election by taxpayer to proceed in small claims division — Election not revocable; Proceedings in small claims division to be informal — Admissible evidence — Proceedings not subject to administrative procedure act — Persons permitted to appear; Voluntary dismissal by taxpayer — Effect; Decisions and judgments of small claims division; Appeals from small claims division. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — The following sections were repealed by S.L. 2000, ch. 2, § 1, effective July 1, 2000:

§ 63-3815, which comprised I.C., § 63-3815, as added by 1971, ch. 154, § 1, p. 754; am. 1996, ch. 322, § 70, p. 1029.

§ 63-3816, which comprised I.C., § 63-3816, as added by 1971, ch. 154, § 2, p. 754; am. 1993, ch. 94, § 13, p. 224.

§ 63-3817, which comprised I.C., § 63-3817, as added by 1971, ch. 154, § 3, p. 754.

§ 63-3818, which comprised I.C., § 63-

3818, as added by 1971, ch. 154, § 4, p. 754.

§ 63-3819, which comprised I.C., § 63-3819, as added by 1971, ch. 154, § 5, p. 754.

§ 63-3820, which comprised I.C., § 63-3820, as added by 1971, ch. 154, § 6, p. 754.

CHAPTER 39

TAX ON NEWLY CONSTRUCTED AND OCCUPIED RESIDENTIAL AND COMMERCIAL STRUCTURES

SECTION.

63-3901 — 63-3912. [Repealed.]

63-3901 — 63-3912. Statement of intent — Imposition of tax — Amount — Exemptions — Reporting — Notice of tax due — Distribution of funds — Penalties and interests — Offset — Lien — Appeals — Administration. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This chapter was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.

The following sections comprised former chapter 39 of Title 63, and were repealed by S.L. 1996, ch. 98, § 1:

63-3901, which comprised 1980, ch. 279, § 1, p. 724.

63-3902, which comprised 1980, ch. 279, § 2, p. 724.

63-3903, which comprised 1980, ch. 279, § 3, p. 724.

63-3904, which comprised 1980, ch. 279, § 4, p. 724.

63-3905, which comprised 1980, ch. 279, § 5, p. 724; am. 1993, ch. 270, § 1, p. 906; am. 1996, ch. 325, § 2, p. 1105.

63-3906, which comprised 1980, ch. 279, § 6, p. 724; am. 1983, ch. 31, § 1, p. 80; am. 1986, ch. 30, § 14, p. 84.

63-3907, which comprised 1980, ch. 279, § 7, p. 724.

63-3908, which comprised 1980, ch. 279, § 8, p. 724.

63-3909, which comprised 1980, ch. 279, § 9, p. 724.

63-3910, which comprised 1980, ch. 279, § 10, p. 724; am. 1983, ch. 31, § 2, p. 80; am. 1986, ch. 30, § 15, p. 84.

63-3911, which comprised 1980, ch. 279, § 11, p. 724.

63-3912, which comprised 1980, ch. 279, § 12, p. 724.

CHAPTER 40

TAXPAYERS' BILL OF RIGHTS

SECTION.

63-4001. Definitions.

63-4002. Acquisition of location information.

63-4003. Communication in connection with tax collection.

63-4004. Harassment or abuse.

63-4005. False or misleading representations.

SECTION.

63-4006. Unfair practices.

63-4007. Multiple tax obligations.

63-4008. Recording of interviews.

63-4009. Installment payments.

63-4010. Quotas prohibited.

63-4011. Civil liability.

63-4001. Definitions. — As used in this chapter:

(1) "Commission" means the state tax commission.

(2) "Communication" means the conveying of information regarding a specific taxpayer's state tax obligation directly or indirectly to any person through any medium.

(3) "Location information" means a taxpayer's place of abode and his telephone number at such place, or his place of employment.

(4) "Revenue officer" means any agent, officer or employee of the state tax commission assigned to:

(a) State tax collection or enforcement activities; or

(b) Auditing books and records relating to any return filed or required to be filed or to investigating failures to file a return.

(5) "Tax obligation" means any legally owed tax liability, including tax, fees, penalty and interest, or any tax form required to be filed.

(6) "Disputed tax liability" is any liability asserted by the tax commission to be due but in regard to which the taxpayer has exercised his right to any legally available administrative or judicial review procedure when such procedure and review therefrom is not fully exhausted. [I.C., § 63-4001, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 6, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4002. Acquisition of location information. — Any revenue officer communicating with any person other than the taxpayer for the purpose of acquiring location information about the taxpayer shall:

(1) Disclose no information beyond that necessary to identify himself as a revenue officer of the state and to state that he is confirming or correcting location information concerning the taxpayer.

(2) Not state or declare that the taxpayer owes any taxes.

(3) Not communicate with any such person more than once unless requested to do so by such person or unless the revenue officer reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.

(4) Not communicate by postcard except for postal locators sent to the U.S. postal service.

(5) After the tax commission is notified in writing that the taxpayer is represented with regard to the subject tax obligation and has knowledge of, or can readily ascertain, such representative's name and address, not communicate with any person other than that representative with regard to the subject tax obligation, unless the representative fails to respond within seven (7) days to communication from the revenue officer. Nothing shall prohibit the tax commission from copying to the taxpayer all written communications with the taxpayer's representative.

(6) Nothing in this section prohibits the tax commission from communication with the U.S. government, other states, or other state or local government agencies regarding location information. [I.C., § 63-4002, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 7, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4003. Communication in connection with tax collection. —

(1) Without the prior consent of the taxpayer or the express permission of a court of competent jurisdiction, a revenue officer may not communicate with a taxpayer in connection with the collection of any tax obligation:

(a) At any unusual time or place or a time or place known or which should be known to be inconvenient to the taxpayer. In the absence of knowledge of circumstances to the contrary, a revenue officer shall presume that the convenient time for communicating with a taxpayer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the taxpayer's location;

(b) If the tax commission has been notified in writing that the taxpayer is represented with respect to such tax obligation and has knowledge of, or can readily ascertain such representative's name and address, unless the representative fails to respond within seven (7) days to a communication with the taxpayer, except:

(i) To advise the taxpayer that the revenue officer's further efforts are being terminated;

(ii) To notify the taxpayer as required by law that the revenue officer may invoke specified remedies which are ordinarily invoked by such revenue officer;

(iii) Where applicable, to notify the taxpayer that the revenue office intends to invoke a specified remedy;

(iv) In regard to matters not within the scope of the notice of the representative's capacity;

but nothing shall prohibit the tax commission from copying to the taxpayer all written communications with the taxpayer's representative; or

(c) At the taxpayer's place of employment if the revenue officer knows or has reason to know that the taxpayer's employer prohibits the taxpayer from receiving such communication.

(2) Except as provided in chapter 30, title 63, Idaho Code, or section 63-4002, Idaho Code, without the prior consent of the taxpayer, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a revenue officer may not communicate, in connection with the collection of any tax obligation, with any person other than the taxpayer, or his representative.

(3) If a taxpayer notifies a revenue officer in writing that the taxpayer refuses to pay a tax obligation or that the taxpayer wishes the revenue officer to cease further communication with the taxpayer, the revenue officer shall not communicate further with the taxpayer with respect to such tax obligation, except:

(a) To advise the taxpayer that the revenue officer's further efforts are being terminated;

(b) To notify the taxpayer as required by law that the revenue officer may invoke specified remedies which are ordinarily invoked by such revenue officer; or

(c) Where applicable, to notify the taxpayer that the revenue officer intends to invoke a specified remedy.

If such notice from the taxpayer is made by mail, notification shall be complete upon receipt. [I.C., § 63-4003, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 8, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4004. Harassment or abuse. — (1) A revenue officer may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a tax obligation. Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(a) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(b) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(c) The publication of a list of persons who allegedly refuse to pay tax obligations.

(d) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(e) The placement of telephone calls without meaningful disclosure of the caller's identity except in connection with a criminal investigation.

(2) The mailing or service of any notice or other document required or authorized by law as a part of the administration and collection of a tax is not prohibited in this section. [I.C., § 63-4004, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 9, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4005. False or misleading representations. — A revenue officer may not use any false, deceptive, or misleading representations or means in connection with the collection of any tax obligation. Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(1) The false representation of the character, amount, or legal status of any tax obligation.

(2) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(3) The representation or implication that nonpayment of any tax obligation will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the state tax commission intends to take such action.

(4) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(5) The false representation or implication that a sale, referral, or other transfer of any interest in a tax obligation shall cause the taxpayer to:

(a) Lose any claim or defense to payment of the tax obligation; or

(b) Become subject to any practice prohibited by this chapter.

(6) The false representation or implication that the taxpayer committed any crime or other conduct in order to disgrace the taxpayer.

(7) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed tax obligation is disputed.

(8) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any state, or which creates a false impression as to its source, authorization, or approval.

(9) The use of any false representation or deceptive means to collect or attempt to collect any tax obligation or to obtain information concerning a taxpayer.

(10) Except in the case of criminal investigation and as otherwise provided for communications to acquire location information under the provisions of section 63-4002, Idaho Code, the failure to disclose clearly in all communications made to collect a tax obligation or to obtain information about a taxpayer, that the revenue officer is attempting to collect a tax obligation and that any information obtained will be used for that purpose.

(11) The false representation or implication that documents are legal process.

(12) The false representation or implication that documents are not legal process forms or do not require action by the consumer. [I.C., § 63-4005, as added by 1993, ch. 94, § 14, p. 224.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4006. Unfair practices. — A revenue officer may not use unfair or unconscionable means to collect or attempt to collect any tax obligation.

Without limiting the general application of the foregoing, the following conduct is a violation of the provisions of this section:

(1) The collection of any amount, including interest, penalty, fee, charge, or expense incidental to the principal obligation, unless such amount is permitted by law.

(2) The solicitation and acceptance by a revenue officer from any person of a check or other payment instrument postdated by more than five (5) days unless such person is notified in writing of the revenue officer's intent to deposit such check or instrument not more than ten (10) nor less than three (3) business days prior to such deposit.

(3) The solicitation by a revenue officer of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(a) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(b) There is no present intention to take possession of the property; or

(c) The property is exempt by law from such dispossession or disablement.

(7) Communicating with a taxpayer regarding a tax obligation by postcard. [I.C., § 63-4006, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 10, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4007. Multiple tax obligations. — If any taxpayer owes multiple tax obligations and makes any single payment to any revenue officer with respect to such obligations, such revenue officer may not apply such payment to any obligation which is disputed by the taxpayer and, where applicable, shall apply such payment in accordance with the taxpayer's directions. Payments remitted together with a tax return shall be applied to the tax obligation on that return. [I.C., § 63-4007, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 11, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after

January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in

section 63-3045, Idaho Code, by no later than November 1, 1993.”

JUDICIAL DECISIONS

Construction.

Taxpayer argued that a portion of the \$42,684 payment (regarding taxes assessed on a sale of a partnership) should also have been applied to the 20 percent deposit required to challenge the redetermination that she owed additional taxes because of the commission's disallowance of the like-kind exchange; however, neither in the taxpayer's letter, nor at any later time did the taxpayer direct that any portion of the \$42,684 pay-

ment could be applied to the deposit required to appeal that issue, § 63-4007 required the commission to apply the payment as directed, and it could not apply a portion of that payment to some other tax obligation, nor could it apply it to the 20 percent deposit required to appeal the redetermination regarding the like-kind exchange as required by § 63-3049(b). *Ambrose v. Idaho State Tax Comm'n*, 139 Idaho 741, 86 P.3d 455 (2004).

63-4008. Recording of interviews. — (1) Any officer or employee of the tax commission in connection with any in-person interview with any taxpayer relating to the determination or collection of any tax shall, upon advance request of such taxpayer, allow the taxpayer to make an audio recording of such interview at the taxpayer's own expense and with the taxpayer's own equipment.

(2) An officer or employee of the tax commission may record any interview described in subsection (1) of this section if such officer or employee:

- (a) Informs the taxpayer of such recording prior to the interview; and
- (b) Upon request of the taxpayer, provides the taxpayer with a transcript or copy of such recording but only if the taxpayer provides reimbursement for the cost of the transcription and reproduction of such transcript or copy.

(3) The provisions of this section shall not apply to criminal investigations or investigations relating to the integrity of any officer or employee of the tax commission. [I.C., § 63-4008, as added by 1993, ch. 94, § 14, p. 224.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: “Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993.”

63-4009. Installment payments. — When a taxpayer becomes delinquent for payment of tax under this title, the taxpayer may request permission to make installment payments. [I.C., § 63-4009, as added by 1993, ch. 94, § 14, p. 224.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: “Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax

commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993.”

63-4010. Quotas prohibited. — In conducting evaluations of individual employees, the tax commission may not use monetary quotas or base the evaluation on monetary collections. [I.C., § 63-4010, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 12, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

63-4011. Civil liability. — (1) Except as otherwise provided in this section, if any revenue officer fails to comply with any provision of this chapter with respect to any person, the tax commission is liable to that person in an amount equal to the sum of:

(a) Any actual damage sustained by that person as a result of such failure;

(b)(i) In the case of any action by an individual, such additional damages as the court may allow, but not exceeding one thousand dollars (\$1,000); or

(ii) In the case of a class action, such amount for each named plaintiff as could be recovered under subsection (1)(a) of this section, and such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed five hundred thousand dollars (\$500,000); and

(c) In the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(2) In determining the amount of liability in any action under subsection (1) of this section, the court shall consider, among other relevant factors:

(a) In an individual action, the frequency and persistence of noncompliance by the revenue officer, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(b) In any class action, the frequency and persistence of noncompliance by the revenue officer, the nature of such noncompliance, the number of persons adversely affected, and the extent to which the revenue officer's noncompliance was intentional.

(3) The commission may not be held liable in any action brought pursuant to this chapter if the commission shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(4) An action to enforce any liability created in this chapter may be brought in any court of competent jurisdiction within one (1) year from the date on which the violation occurs.

(5) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(6) The entire amount of any judgment entered under this section shall be paid from the state refund account established in section 63-3067, Idaho Code. [I.C., § 63-4011, as added by 1993, ch. 94, § 14, p. 224; am. 1994, ch. 172, § 13, p. 387.]

STATUTORY NOTES

Effective Dates. — Section 15 of S.L. 1993, ch. 94 read: "Except for Section 2, this act shall be in full force and effect on and after January 1, 1994, and except that the tax commission is authorized to fix the rate of interest for calendar year 1994 as provided in section 63-3045, Idaho Code, by no later than November 1, 1993."

Section 14 of S.L. 1994, ch. 172, declared an emergency and provided this act shall be in full force and effect on and after March 24, 1994, and retroactively to January 1, 1994, except § 5 which shall be in full force and effect on and after July 1, 1994. Approved March 24, 1994.

CHAPTER 41

SPECIAL DISTRICT DISSOLUTION ACT

SECTION.

63-4101. Short title.

63-4102. Definition.

63-4103. Petitions for dissolution of special districts.

63-4104. Nonfunctioning district.

63-4105. Property and funds — Disposition upon dissolution.

SECTION.

63-4106. Provision for payment of indebtedness upon dissolution — Special tax levy for payment of district indebtedness.

63-4101. Short title. — This chapter may be known and cited as the "Special District Dissolution Act." [I.C., § 63-4101, as added by 1987, ch. 87, § 1, p. 165.]

63-4102. Definition. — As used in this chapter, "special district" means any single purpose district organized or that may be organized as a local public body in accordance with the laws of the state of Idaho for the purpose of constructing or furnishing any municipal service where the district's enabling law does not provide for dissolution of any district formed under it. [I.C., § 63-4102, as added by 1987, ch. 87, § 1, p. 165.]

63-4103. Petitions for dissolution of special districts. — Proceedings for the dissolution of a special district may be initiated by a petition containing the signatures of qualified electors of the district or owners of property within the district equal in number to twenty-five percent (25%) of the largest number of persons who voted for any director in the last election of directors or if no election has been held within two (2) years then a petition may be initiated by twenty-five (25) or more qualified electors or property owners of the district.

The petition, when completed and verified, shall be filed with the clerk of the court of the county or counties if more than one (1) county is involved. The county commissioners shall publish notice and hold a hearing on the matter. If necessary, they shall hold an election, subject to the provisions of section 34-106, Idaho Code, on the matter. The hearing and election shall be held in accordance with the terms and provisions of sections 40-1801 through 40-1809, and chapter 14, title 34, Idaho Code. [I.C., § 63-4103, as added by 1987, ch. 87, § 1, p. 165; am. 1995, ch. 118, § 89, p. 417.]

63-4104. Nonfunctioning district. — Any special district which fails or has ceased to function for two (2) or more years may be dissolved by the board or boards of county commissioners of the county or counties in which it is located. The county commissioners may initiate such action upon their own volition or it may be initiated by petition. If by resolution a board of county commissioners finds that an emergency exists, the board may immediately take all steps necessary to operate and provide services of the district and preserve and maintain the property owned by the district. [I.C., § 63-4104, as added by 1987, ch. 87, § 1, p. 165; am. 2001, ch. 184, § 2, p. 642.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 2001, ch. 184 declared an emergency. Approved March 26, 2001.

63-4105. Property and funds — Disposition upon dissolution. — Title to all machinery, buildings, lands, and property of every kind and nature, belonging to a dissolved district shall immediately upon dissolution be vested in the board of county commissioners as custodians thereof; and thereafter as soon as may be practical the board shall dispose of the same. If the county and/or any incorporated cities are to continue providing the services formerly provided by the dissolved district, then the county commissioners and officials from such cities shall estimate the value of all such property and said property shall be transferred to any cities providing services formerly provided by the dissolved district in direct proportion to the portion of the dissolving districts' total valuation for the preceding calendar year which is located within the city or cities, with the remaining portion of the property going to the county. If the county commissioners and officials from such cities determine that it is advantageous to dispose of the property at public or private sale, all funds arising from such sale or sales shall be deposited in the county treasury in a separate fund, together with other moneys belonging to such district, to be maintained by the treasurer, and from which debts of and claims against said districts shall be paid as hereinafter provided. All funds in the treasury of such district shall be delivered by the treasurer thereof to the treasurer of such county and deposited in a special fund, and all moneys thereafter accruing to such districts from collection of taxes and assessments levied or assessed prior to such dissolution, and all moneys belonging to such district from any source,

shall likewise be placed in such special fund. Following the payment of debts and claims against such district, any moneys remaining in such special fund shall be distributed to any incorporated cities located within the boundaries of such district which are providing services formerly provided by such district in proportion to the portion of the total valuation of such district which is located within such cities. All remaining moneys after distribution to such cities shall be transferred to the current expense fund of the county.

If such district is located in more than one (1) county, then all authority vested in the county commissioners under this section shall be vested jointly in the several commissioners; provided, however, that any special fund established for the deposit of moneys accruing to such district shall be established in the treasury of the county which contains the greatest portion of the preceding year's valuation of the dissolved district and any property or moneys to be transferred to a county current expense fund shall be distributed to the counties in proportion to the portion of the valuation of the district which is located within each county but not including the valuation of any incorporated city which is providing services formerly provided by such district. [I.C., § 63-4105, as added by 1987, ch. 87, § 1, p. 165.]

63-4106. Provision for payment of indebtedness upon dissolution — Special tax levy for payment of district indebtedness. — The board of county commissioners in the county or counties in which the dissolved district is located shall compute the total indebtedness of the district and shall provide for the payment thereof out of district funds on hand, or out of revenues to be raised by special levies, which shall be determined by the county or counties, and shall be certified to the clerk of the county board of commissioners of each of the counties wherein is situated any part of such district and such tax shall be levied and imposed by each of such counties upon such property of the district as may be within such county and the tax shall be collected, and not less than quarterly, shall be remitted to the treasurer of the county which contains the greatest portion of the preceding calendar year's valuation of the dissolved district, to be applied in payment of the indebtedness of such district as hereinafter provided.

At the next regular annual meeting of the board of commissioners of the county or counties in which the dissolved district is located at which levies for state and county purposes are fixed, and each year thereafter until all indebtedness of such district shall have been fully paid, such board shall, in addition to all other tax levies, levy a special tax upon all of the property situated within the former boundaries of such dissolved district, sufficient to raise by taxation funds for the payment of current and accruing terms and conditions of outstanding bonds of such district; and shall each year thereafter continue such levy, or make such other or additional levies as may be required, to fully pay and retire the indebtedness of such district according to the terms and conditions thereof; and such taxes must be collected as are other county taxes and shall be turned over to the treasurer of the county which contains the greatest portion of the preceding calendar year's valuation of the district who must redeem or post for redemption all warrants and bonds as the same mature and in order of their line, and for

which the treasurer has funds arising from such district for the payment of same. [I.C., § 63-4106, as added by 1987, ch. 87, § 1, p. 165.]

CHAPTER 42

ILLEGAL DRUG STAMP TAX ACT

SECTION.

- 63-4201. Short title.
- 63-4202. Definitions.
- 63-4203. Illegal drug tax imposed on possession of controlled substances.
- 63-4204. Stamps, evidencing tax paid to be displayed, and provided and sold by the commission.
- 63-4205. Stamps to be affixed to controlled substances.
- 63-4206. Confidentiality of stamp purchases and redetermination — Immunity from prosecution — Penalty for disclosure.

SECTION.

- 63-4207. Civil penalty — Criminal penalty — Statute of limitations.
- 63-4208. Commission to administer tax — Jeopardy assessment — Inapplicability of homestead exemption — Burden of proof — Other sections applicable.
- 63-4209. Distribution of tax revenues.
- 63-4210. Lawful possession.
- 63-4211. Third party and exemption claims — Actions against state of Idaho.

63-4201. Short title. — This chapter is known as the “Illegal Drug Tax Act.” [I.C., § 63-4201, as added by 1989, ch. 144, § 1, p. 349; am. 1990, ch. 179, § 1, p. 378.]

JUDICIAL DECISIONS

Cited in: *Garcia v. State Tax Comm’n*, 136 Idaho 610, 38 P.3d 1266 (2002).

- 63-4202. Definitions.** — As used in this chapter:
- (1) “Commission” means the state tax commission.
 - (2) “Controlled substance” means the entire amount of any drug or substance, whether real or counterfeit, as defined in section 37-2701, Idaho Code, when possessed in the following quantities and in violation of Idaho law:
 - (a) More than forty-two and one-half (42 1/2) grams of marijuana; or
 - (b) One (1) or more growing marijuana plants; or
 - (c) Seven (7) or more grams of any other controlled substance sold by weight; or
 - (d) Ten (10) or more dosage units of any controlled substance which is not sold by weight.
 - (3) “Possess” or “possession” means, in addition to its ordinary meaning and tenses, to include hold, sell, manufacture, acquire, produce, purchase, ship, transport, transfer or import into Idaho. [I.C., § 63-4202, as added by 1989, ch. 144, § 1, p. 349; am. 1990, ch. 179, § 2, p. 378; am. 1993, ch. 9, § 1, p. 26.]

JUDICIAL DECISIONS

Constitutionality. Although the Illegal Drug Stamp Tax Act, §§ 63-4202 through 63-4208, was later corrected, because the 1989 version under which defendant was prosecuted was determined to be unconstitutional, his convictions, and sen-

tences thereon, must be vacated. *State v. Hernandez*, 120 Idaho 785, 820 P.2d 380 (Ct. App. 1991).

Cited in: *State v. Johnson*, 126 Idaho 859, 893 P.2d 806 (Ct. App. 1995).

63-4203. Illegal drug tax imposed on possession of controlled substances. — (1) Every person who in violation of Idaho law possesses a controlled substance shall be liable for payment of an excise tax on all of the controlled substance possessed including the amount below any threshold provided in section 63-4202, Idaho Code.

(2) The tax hereby imposed is calculated at the following rates:

(a) On each gram of marijuana, or each portion of a gram, three dollars and fifty cents (\$3.50);

(b) On each gram of other controlled substance sold by weight, or each portion of a gram, two hundred dollars (\$200);

(c) On each fifty (50) dosage units of a controlled substance that is not sold by weight, or portion thereof, two thousand dollars (\$2,000); and

(d) On a growing marijuana plant, seven hundred seventy-five dollars (\$775) per plant. A credit of seven hundred seventy-five dollars (\$775) shall be given for the payment of each illegal drug tax on a growing marijuana plant against payment of illegal drug taxes for possession of marijuana harvested from the growing marijuana plant, provided, no credit shall be given unless evidence of payment of illegal drug taxes on a growing marijuana plant is permanently affixed to the marijuana harvested from it.

(3) For the purpose of calculating the illegal drug tax under this chapter, other than for growing marijuana plants, a quantity of controlled substance is measured by the weight of the substance, whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in a person's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

(4) For the purposes of article VII of the Idaho constitution, the illegal drug taxes imposed in this chapter shall not be held or construed to be a tax on property. [I.C., § 63-4203, as added by 1989, ch. 144, § 1, p. 349; am. 1990, ch. 179, § 3, p. 378; am. 1993, ch. 9, § 2, p. 26.]

JUDICIAL DECISIONS

Evidence.

In order to find a defendant guilty of aiding and abetting the failure to affix the required drug tax stamps, a jury is required to find that: (1) defendant knowingly participated in or assisted the drug dealer in the possession or distribution of cocaine; and (2) the neces-

sary drug tax stamps had not been affixed. *State v. Romero-Garcia*, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

Cited in: *Garcia v. State Tax Comm'n*, 136 Idaho 610, 38 P.3d 1266 (2002).

63-4204. Stamps, evidencing tax paid to be displayed, and provided and sold by the commission. — (1) The commission shall adopt a uniform system of providing, affixing and displaying official stamps, official labels, or other official indicia for controlled substances on the possession of which an illegal drug tax is imposed.

(2) In addition to any other prohibition against possession of a controlled substance by Idaho law, no person subject to a tax imposed in this chapter may possess a controlled substance, unless the tax has been paid as evidenced by a stamp or other official indicia.

(3) Official stamps, labels, or other indicia to be affixed to all controlled substances shall be purchased from the commission. The purchaser shall pay one hundred percent (100%) of face value for each stamp, label, or other indicia at the time of the purchase. [I.C., § 63-4204, as added by 1989, ch. 144, § 1, p. 349; am. 1990, ch. 179, § 4, p. 378.]

JUDICIAL DECISIONS

Cited in: State v. Johnson, 126 Idaho 859, 893 P.2d 806 (Ct. App. 1995).

63-4205. Stamps to be affixed to controlled substances. —

(1) When any person manufactures, purchases, acquires, possesses, transports, or imports into this state a controlled substance, subject to illegal drug taxes, he shall obtain from the commission illegal drug tax stamps and shall permanently affix the official indicia on the controlled substance evidencing the payment of the tax required under this chapter. No stamp or other official indicia may be used more than once.

(2) Taxes imposed upon possession of controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by the person acquiring or possessing such controlled substance.

(3) Payments required under this chapter shall be made to the commission on forms provided by the commission. The commission shall collect all taxes imposed under this chapter. [I.C., § 63-4205, as added by 1989, ch. 144, § 1, p. 349; am. 1990, ch. 179, § 5, p. 378.]

JUDICIAL DECISIONS

ANALYSIS

Complaint prior to 1990 amendment.

Evidence.

—Sufficient.

Prosecutorial misconduct.

Complaint Prior to 1990 Amendment.

Defendant was apprehended with cocaine on December 1, 1989, and an amended complaint was filed on December 15, 1989; therefore, because the amended version of the Illegal Drug Stamp Tax Act was not in effect until March 27, 1990, defendant's conviction for failure to affix a drug stamp was vacated. State v. Gallegos, 120 Idaho 894, 821 P.2d 949 (1991).

Evidence.

—Sufficient.

Evidence was sufficient to support jury's verdict of guilty of aiding and abetting trafficking in cocaine and aiding and abetting

failure to affix illegal drug tax stamps where defendant arranged for the sale of cocaine to a confidential informant and accompanied him to the drug dealer's residence where the sale took place. State v. Romero-Garcia, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

Prosecutorial Misconduct.

There was no prosecutorial misconduct where prosecutor reiterated what the district court had already instructed, that the state bears the burden of proving every element beyond a reasonable doubt and that defendant has no obligation to present evidence; the prosecutor stated that criminal defendants had those and a number of other rights.

State v. Romero-Garcia, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

126 Idaho 859, 893 P.2d 806 (Ct. App. 1995); Garcia v. State Tax Comm'n, 136 Idaho 610, 38 P.3d 1266 (2002).

Cited in: State v. Dice, 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994); State v. Johnson,

63-4206. Confidentiality of stamp purchases and redetermination — Immunity from prosecution — Penalty for disclosure. —
(1) No person applying to purchase or purchasing illegal drug tax stamps is required to give his name, address, social security number or other identifying information.

(2) No commissioner, deputy, clerk, agent or employee of the commission, and no person formerly holding such a position, may divulge or make known to any person any information obtained from a person applying to purchase or purchasing illegal drug tax stamps or seeking a redetermination by the commission of an assessment for illegal drug taxes or penalties imposed in this chapter. Any person violating this provision shall be guilty of a felony and upon conviction shall forfeit his office or employment and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or by imprisonment for not more than five (5) years; provided, any information obtained from a person seeking a redetermination of an assessment for taxes or penalties may be used within the commission or in any action in court brought for the collection, remission, cancellation or refund, in whole or in part of the taxes or penalties. Provided further, the provisions of this section do not prohibit exchanges of information within the commission necessary for the processing of purchases of illegal drug tax stamps.

(3) Notwithstanding any other provision of Idaho law, no information obtained by the commission from a person applying to purchase or purchasing illegal drug tax stamps or seeking a redetermination by the commission of an assessment for illegal drug taxes or penalties imposed in this chapter, may be used against him in any criminal proceeding or for investigatory purposes leading to other evidence of a crime unless it is independently obtained; otherwise, nothing in this chapter provides immunity of any kind to any person from criminal prosecution under Idaho law.

(4) The provisions of this section do not prohibit the commission from publishing statistics that do not disclose the identity of persons purchasing illegal drug stamps or the actual contents of particular applications, reports, forms or returns. [I.C., § 63-4206, as added by 1990, ch. 179, § 6, p. 378.]

STATUTORY NOTES

Compiler's Notes. — Former § 63-4206 was amended and redesignated as § 63-4207 by § 7 of S.L. 1990, ch. 179.

JUDICIAL DECISIONS

ANALYSIS

Complaint prior to 1990 amendment.
Constitutionality.

Complaint Prior to 1990 Amendment.

Defendant was apprehended with cocaine on December 1, 1989, and an amended complaint was filed on December 15, 1989; therefore, because the amended version of the Illegal Drug Stamp Tax Act was not in effect until March 27, 1990, defendant's conviction for failure to affix a drug stamp was vacated. *State v. Gallegos*, 120 Idaho 894, 821 P.2d 949 (1991).

Constitutionality.

Under the 1989 version, although a purchaser of drug stamps was not required to

give identifying information when paying the tax, there was no penalty for disclosure of information by tax commission employees or agents, and there was no express prohibition against using the information obtained through the purchase of the stamps in criminal proceedings or investigations; therefore defendant's conviction for failure to purchase and affix a drug stamp under the 1989 version of the Illegal Drug Stamp Tax Act was vacated due to the unconstitutionality of the act. *State v. Smith*, 120 Idaho 77, 813 P.2d 888 (1991).

63-4207. Civil penalty — Criminal penalty — Statute of limitations. — (1) Any person violating the provisions of this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax imposed by section 63-4203, Idaho Code. The penalty shall be collected as part of the tax.

(2) In addition to the tax penalty imposed, any person subject to the taxes imposed in this chapter distributing or possessing a controlled substance without affixing the appropriate stamps, labels, or other indicia is guilty of a criminal offense and, upon conviction, is punishable to the same extent as possession of the controlled substance is punishable as set out in section 37-2732, Idaho Code.

(3) Notwithstanding any other provision of the criminal laws of this state, an information, indictment, or complaint may be filed upon any criminal offense under this chapter within three (3) years after the commission of the offense. [I.C., § 63-4206, as added by 1989, ch. 144, § 1, p. 349; am. and redesig. 1990, ch. 179, § 7, p. 378.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 63-4206.

Former § 63-4207 was amended and redese-

igned as § 63-4208 by § 8 of S.L. 1990, ch. 179.

JUDICIAL DECISIONS**ANALYSIS**

Evidence.

—Sufficient.

Evidence.

—Sufficient.

Evidence was sufficient to support jury's verdict of guilty of aiding and abetting trafficking in cocaine and aiding and abetting failure to affix illegal drug tax stamps where defendant arranged for the sale of cocaine to a confidential informant and accompanied him

to the drug dealer's residence where the sale took place. *State v. Romero-Garcia*, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

Cited in: *State v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993); *State v. Dice*, 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994); *Garcia v. State Tax Comm'n*, 136 Idaho 610, 38 P.3d 1266 (2002).

63-4208. Commission to administer tax — Jeopardy assessment — Inapplicability of homestead exemption — Burden of proof —

Other sections applicable. — (1) The commission shall administer the provisions of this chapter and may adopt rules necessary to enforce the provisions of this chapter.

(2)(a) Upon the discovery of a controlled substance not bearing valid stamps or other official indicia required in this chapter, the commission shall make a jeopardy determination assessing the taxes and penalties against the person subject to the illegal drug taxes. The determination shall be made upon personal knowledge or information available to the commission. Written notice of the amount of the tax and penalty and demand for immediate payment shall be mailed, by certified or registered mail, to the last known address of, or served in person upon, the person subject to the illegal drug taxes and penalties. Upon giving notice and demand, collection procedures as provided in sections 63-3050 through 63-3064 and 63-3065A, Idaho Code, may be instituted immediately.

(b) A person aggrieved by a jeopardy assessment may, within thirty (30) days after mailing or service of the notice of the jeopardy assessment, petition the commission for a redetermination of the assessment. Collection procedures shall not be stayed pending the redetermination unless a bond in double the amount of the assessment is filed with the commission. If a petition for redetermination is not filed within the thirty (30) day period, the jeopardy assessment becomes final.

(c) If a petition for redetermination is filed within the thirty (30) day period, the commission shall redetermine the petition and if requested shall give the petitioner a reasonable opportunity to be heard. The redetermination shall proceed in accordance with the procedures established for redetermining notices of deficiency determination under section 63-3045, Idaho Code. The commission shall mail, by certified mail, or personally serve the petitioner the redetermination decision. A decision redetermining a jeopardy assessment becomes final thirty (30) days after mailing or service of the decision. A person aggrieved by a redetermination by the state tax commission may seek review of that redetermination as provided in section 63-3049, Idaho Code, as limited by this provision.

(d) No property seized pursuant to a jeopardy assessment shall be sold until an assessment becomes final, provided, such property can be sold:

- (i) If its owner consents;
- (ii) If the expenses of maintenance of the property will gravely reduce the net proceeds of its sale; or
- (iii) If the property is perishable.

(3) A homestead exemption provided in chapter 10, title 55, Idaho Code, shall not exempt real property from a lien for illegal drug taxes imposed in this chapter.

(4) Any taxes and penalties assessed by the commission are presumed to be valid and correct. The burden is on the taxpayer to show their incorrectness or invalidity. The unlawful possession of any controlled substance not bearing valid stamps or other official indicia required in this chapter is an act prejudicing the collection of the tax imposed in this chapter. No specific finding of jeopardy by the commission is required to authorize the use of the jeopardy assessment procedure provided in this section.

(5) At any time within one (1) year after the imposition of a jeopardy assessment pursuant to subsection (2)(a) of this section, the commission, if it determines that the jeopardy assessment was not issued for the full amount of tax due under this chapter, may issue to the person liable for the tax under this chapter a notice of deficiency determination in the manner provided in section 63-3045, Idaho Code, for such additional amount. The provisions of subsection (2)(c) of this section shall apply to a notice issued under the provisions of this subsection.

(6) In addition to the enforcement and penalty provisions of this chapter, sections 63-3038, 63-3039, 63-3042, 63-3043, 63-3047 and 63-3048, Idaho Code, shall apply and be available to the state tax commission for the enforcement of the provisions of this chapter for the assessment and collection of any amounts due and said sections shall be considered to be a part of this chapter. [I.C., § 63-4207, as added by 1989, ch. 144, § 1, p. 349; am. 1989, ch. 323, § 1, p. 349; am. and redesisg. 1990, ch. 179, § 8, p. 378; am. 1993, ch. 9, § 3, p. 26.]

STATUTORY NOTES

Compiler's Notes. — This section was formerly compiled as § 63-4207. Ignated as § 63-4209 by § 9 of S.L. 1990, ch. 179.

Former § 63-4208 was amended and redes-

JUDICIAL DECISIONS

Jeopardy Assessment.

Where defendant was served with a notice of jeopardy assessment and demand for payment of a controlled substance tax and state seized certain property of defendant and he filed a petition for redetermination pursuant to subsection (2)(b) of this section, by filing such petition defendant prevented the notice of jeopardy from becoming final, and when commission on redetermination withdrew the notice of jeopardy assessment and returned

defendant's property, the notice of jeopardy assessment never became final and, thus, defendant was never put in jeopardy; therefore, criminal charges against defendant could not be dismissed on ground that continued prosecution against him would constitute a violation of the protection against double jeopardy, as guaranteed by Idaho Const., Art. 3, § 13. *State v. Gett*, 130 Idaho 196, 938 P.2d 1234 (1997).

63-4209. Distribution of tax revenues. — The revenues received from the taxes imposed by section 63-4203, Idaho Code, and any penalties, interest, or deficiency additions, shall be distributed periodically as follows:

(1) An amount of money equal to the actual cost of collecting, administering and enforcing the tax by the commission, as determined by it shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost of collecting, administering and enforcing the tax by the commission or in excess of any amount required to be distributed by subsection (2) of this section shall, at the end of each fiscal year, be distributed to the substance abuse treatment account.

(2) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the

commission to be paid shall be paid from the state refund account and those moneys are hereby continuously appropriated for that purpose. [I.C., § 63-4028, as added by 1989, ch. 144, § 1, p. 349; redesignated and amended 1990, ch. 179, § 9, p. 378.]

STATUTORY NOTES

Cross References. — State refund account, § 63-3067.

Compiler's Notes. — This section was formerly compiled as § 63-4208.

63-4210. Lawful possession. — Nothing in this chapter requires persons lawfully in possession of a controlled substance to pay the tax required under this chapter. [I.C., § 63-4210, as added by 1990, ch. 179, § 10, p. 378.]

STATUTORY NOTES

Effective Dates. — Section 11 of S.L. 1990, ch. 179 declared an emergency. Approved March 27, 1990.

63-4211. Third party and exemption claims — Actions against state of Idaho. — (1) Any person claiming that the property levied upon and seized by the commission for the collection of any tax, penalty, interest or other amounts due under this chapter is either:

(a) the property of a person other than a person against whom taxes sought to be collected under this chapter have been assessed, or

(b) the property is property exempt from levy to enforce a claim for state taxes under chapter 6, title 11, Idaho Code,

may, within fourteen (14) days of the date of the levy, file a written claim with the commission setting forth the grounds for the claim. The commission shall grant or deny the claim in a written notice to the claimant within fourteen (14) days of the commission's receipt of the claim.

(2) A denial of a claim under subsection (1) of this section by the commission may be reviewed in the district court for Ada county or the county the property was seized or is then located by a complaint filed by the claimant against the commission within thirty (30) days after the mailing of the notice denying the claim, in whole or in part. Upon the serving of summons upon the commission the case shall proceed as other civil cases and shall be heard by the court without a jury. Only the state of Idaho shall be responsible for any final money judgment secured against the commission, and said judgment shall be paid or satisfied out of the state refund fund created in section 63-3067, Idaho Code. [I.C., § 63-4211, as added by 1993, ch. 9, § 4, p. 26.]

CHAPTER 44

THE IDAHO SMALL EMPLOYER INCENTIVE ACT OF 2005

SECTION.
63-4401. Short title — Application.
63-4402. Definitions.
63-4403. Additional income tax credit for capital investment.
63-4404. Real property improvement tax credit.
63-4405. Additional income tax credit for new jobs.

SECTION.
63-4406. Limitations, and other provisions on credits against income taxes.
63-4407. Recapture.
63-4408. Sales and use tax incentives — Rebates — Recapture.
63-4409. Administration.

63-4401. Short title — Application. — This chapter shall be known and may be cited as “The Idaho Small Employer Incentive Act of 2005.” No provision of this chapter applies to a person, taxpayer, or other entity entitled to, applying for, or receiving any credit, rebate or other benefit under chapter 29, 39 or 43, title 63, Idaho Code. [I.C., § 63-4401, as added by 2005, ch. 370, § 1, p. 1178.]

STATUTORY NOTES

Compiler’s Notes. — Chapter 39 of Title 63, referred to in this section, was repealed by S.L. 1996, ch. 98, § 1, effective January 1, 1997.
Although chapter 43 of title 63 is referenced

in this section, no such provision exist in the Idaho Code.
Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-4402. Definitions. — (1) The definitions contained in the Idaho income tax act, shall apply to this chapter unless modified in this chapter or unless the context clearly requires another definition.

- (2) As used in this chapter:
 - (a) “Commission” means the Idaho state tax commission.
 - (b) “New plant and building facilities” means facility or facilities, including related parking facilities, where employees are physically employed.
 - (c) “Idaho income tax act” means chapter 30, title 63, Idaho Code.
 - (d) “Investment in new plant” means investment in new plant and building facilities that are:
 - (i) Qualified investments; or
 - (ii) Buildings or structural components of buildings.
 - (e) “New employee”:
 - (i) Means an individual, employed primarily within the project site by the taxpayer, subject to Idaho income tax withholding whether or not any amounts are required to be withheld, covered for unemployment insurance purposes under chapter 13, title 72, Idaho Code, and who was eligible to receive employer provided coverage under a health benefit plan as described in section 41-4703, Idaho Code, during the taxable year. A person shall be deemed to be so employed if such person performs duties on a regular full-time basis.
 - (ii) The number of employees employed primarily within the project site by the taxpayer, during any taxable year for a taxpayer shall be the mathematical average of the number of such employees reported to the

Idaho department of labor for employment security purposes during the twelve (12) months of the taxable year which qualified under paragraph (e)(i) of this subsection (2). In the event the business is in operation for less than the entire taxable year, the number of employees of the taxpayer for the year shall be the average number actually employed during the months of operation, provided that the qualifications of paragraph (e)(i) of this subsection (2) are met.

(iii) Existing employees of the taxpayer who obtain new qualifying positions within the project site and employees transferred from a related taxpayer or acquired as part of the acquisition of a trade or business from another taxpayer within the prior twelve (12) months are not included in this definition unless the new position or transfer creates a net new job in Idaho.

(f) "Project period" means the period of time beginning at the earlier of a physical change to the project site or the first employment of new employees located in Idaho who are related to the activities at the project site, but no earlier than January 1, 2006, and ending when the facilities constituting the project are placed in service, but no later than December 31, 2010.

(g) "Project site" means an area or areas at which new plant and building facilities are located and at which the tax incentive criteria have been or will be met and which are either:

(i) A single geographic area located in this state at which the new plant and building facilities owned or leased by the taxpayer are located; or

(ii) One (1) or more geographic areas located in this state if eighty percent (80%) or more of the investment required by subsection (2)(j)(i) of this section is made at one (1) of the areas.

(iii) The project site must be identified and described to the commission by a taxpayer subject to tax under the Idaho income tax act, in the form and manner prescribed by the commission.

(h) "Qualified investment" shall be defined as in section 63-3029B, Idaho Code.

(i) "Recapture period" means:

(i) In the case of credits described in sections 63-4403 and 63-4404, Idaho Code, the same period for which a recapture of investment tax credit under section 63-3029B, Idaho Code, is required; or

(ii) In the case of credits described in section 63-4405, Idaho Code, five (5) years from the date the project period ends.

(j) "Tax incentive criteria" means a taxpayer meeting at a project site the requirements of subparagraphs (i) and (ii) of this paragraph (j).

(i) During the project period, making capital investments in new plant of at least five hundred thousand dollars (\$500,000) at the project site.

(ii) During a period of time beginning on January 1, 2006, and ending at the conclusion of the project period:

1. Increasing employment at the project site by at least ten (10) new employees each of whom must earn at least nineteen dollars and twenty-three cents (\$19.23) per hour worked during the taxpayer's taxable year.

2. Employment increases above the ten (10) new employees described in subparagraph (ii)1. of this paragraph (j) at the project site shall on average earn at least fifteen dollars and fifty cents (\$15.50) per hour worked during the taxpayer's taxable year. Calculation of the group average earnings shall not include amounts paid to any employee earning more than forty-eight dollars and eight cents (\$48.08) per hour or less than twelve dollars (\$12.00) per hour worked during the taxpayer's taxable year. The denominator of this calculation shall be the number of new job positions filled that pay less than forty-eight dollars and eight cents (\$48.08) per hour worked during the taxpayer's taxable year.

3. Earnings calculated pursuant to subparagraph (ii) of this paragraph (j) shall include income upon which Idaho income tax withholding is required under section 63-3035, Idaho Code, but shall not include income such as stock options or restricted stock grants.

4. For purposes of determining whether the increased employment threshold has been met, employment at the project site shall be determined by calculating the increase of such new employees reported to the Idaho department of labor for employment security purposes over the employees so reported as of the beginning of the project period or no earlier than January 1, 2006, whichever is larger; and

5. Maintaining net increased employment in Idaho required by subparagraph (ii) of this paragraph (j) during the remainder of the project period.

(k) "Taxpayer," for purposes of paragraphs (j) and (e) of this subsection (2), means either:

(i) A single taxpayer; or

(ii) In the context of a unitary group filing a combined report under section 63-3027(t), Idaho Code, all members of a unitary group includable in a combined report for the tax years in which the credit provided for by this chapter may be claimed. For all other purposes, the terms of section 63-3009, Idaho Code, and section 63-3027(t)(1), Idaho Code, apply to the meaning of "taxpayer." [I.C., § 63-4402, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 1, p. 974; am. 2007, ch. 360, § 25, p. 1061.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 314, throughout the section, substituted "new plant and building facilities" for "headquarters or administrative facilities"; in subsection (2)(b), deleted "corporate staff" preceding "employees" and "and where the majority of the company's services are handled. Company services may include: accounts receivable and payable, accounting, data processing, distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchas-

ing/procurement, planning, reporting and compliance, tax, treasury, or other headquarters-related services" from the end; in subsection (2)(f), substituted "2006" for "2005" and "2010" for "2009"; in the introductory paragraph of subsection (2)(j), deleted the reference to subparagraph (iii) of paragraph (j) following "(ii)"; in subsection (2)(j)(ii), substituted "2006" for "2005"; deleted subsections (2)(j)(ii)(1)(A) and (B), which formerly read: "(A) Earnings calculated pursuant to subparagraph (ii) of this paragraph (j) shall include income upon which Idaho income tax

withholding is required under section 63-3035, Idaho Code, but shall not include income such as stock options or restricted stock grants. (B) For purposes of determining whether the increased employment threshold has been met, employment at the project site shall be determined by calculating the increase of such new employees reported to the Idaho department of commerce and labor for employment security purposes over the employees so reported as of the beginning of the project period or no earlier than January 1, 2005, whichever is larger.”; added subsections (2)(j)(ii)(2) through (4), and redesignated former subsection (2)(j)(ii)(2) as (2)(j)(ii)(5); and deleted subsection (2)(j)(iii), which read:

“No person meets the tax incentive criteria unless the ratio of new employees qualified under subparagraph (ii) of this section to investment in new plant under subparagraph (i) of this section exceeds one (1) employee for each fifty thousand dollars (\$50,000) of investment in new plant.”

The 2007 amendment, by ch. 360, in subsections (2)(e)(ii) and (2)(j)(ii)4., deleted “commerce and” following “department of.”

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

Section 6 of S.L. 2006, ch. 314 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-4403. Additional income tax credit for capital investment. —

(1) For taxable years beginning on or after January 1, 2006, and before December 31, 2010, and subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, in regard to qualified investments made after the beginning of the project period and before December 31, 2010, in lieu of the investment tax credit provided in section 63-3029B, Idaho Code, be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of three and seventy-five one hundredths percent (3.75%) of the amount of qualified investment made during a taxable year, wherever located within this state.

(2) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(3) The credit allowed by this section shall not exceed seven hundred fifty thousand dollars (\$750,000) in any one (1) taxable year. [I.C., § 63-4403, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 2, p. 974.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 314, in subsection (1), substituted the year “2006” for “2005” and twice substituted the year “2010” for “2009”; and in subsection (3), substituted “seven hundred fifty thousand dollars (\$750,000)” for “one million two hundred fifty thousand dollars (\$1,250,000).”

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

Section 6 of S.L. 2006, ch. 314 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-4404. Real property improvement tax credit. — (1) For taxable years beginning on or after January 1, 2006, and before December 31, 2010, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall be allowed a nonrefundable credit against taxes imposed by sections 63-3024, 63-3025 and 63-3025A, Idaho Code, in the amount of two and five-tenths percent (2.5%) of the investment in new plant which is incurred during the project period applicable to the project site in which the investment is made.

(2) The credit allowed by this section shall not exceed one hundred twenty-five thousand dollars (\$125,000) in any one (1) taxable year.

(3) No credit is allowable under this section for a qualified investment in regard to which a credit under section 63-4403, Idaho Code, is available.

(4) The credit allowed by this section is limited to buildings and structural components of buildings related to new plant and building facilities. [I.C., § 63-4404, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 3, p. 974.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 314, in subsection (1), substituted the year “2006” for “2005” and “2010” for “2009”; and in subsection (4), substituted “new plant and building facilities” for “headquarters or administrative facilities.”

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

Section 6 of S.L. 2006, ch. 314 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-4405. Additional income tax credit for new jobs. — (1) Subject to the limitations of this chapter, for taxable years beginning on or after January 1, 2006, and before December 31, 2010, a taxpayer who has certified that the tax incentive criteria will be met within a project site during a project period shall, for the number of new employees earning more than a rate of twenty-four dollars and four cents (\$24.04) per hour worked, in lieu of the credit amount in subsection (2)(a) of section 63-3029F, Idaho Code, be allowed the credit provided by this section. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following:

- (a) The number of employees for the prior taxable year; or
 - (b) The average of the number of employees for the three (3) prior taxable years.
- (2) The credit provided by this section shall be:
- (a) One thousand five hundred dollars (\$1,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than twenty-four dollars and four cents (\$24.04) per hour worked but equal to or less than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked;
 - (b) Two thousand dollars (\$2,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of twenty-eight dollars and eighty-five cents (\$28.85) per hour worked but equal to or less than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked;
 - (c) Two thousand five hundred dollars (\$2,500) for each new employee whose annual salary during the taxable year for which the credit is earned is greater than an average rate of thirty-six dollars and six cents (\$36.06) per hour worked but equal to or less than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked;
 - (d) Three thousand dollars (\$3,000) for each new employee whose annual salary during the taxable year for which the credit is earned is greater

than an average rate of forty-three dollars and twenty-seven cents (\$43.27) per hour worked.

(3) The credit allowed by subsection (1) of this section shall apply only to employment primarily within the project site. No credit shall be earned unless such employee shall have performed such duties for the taxpayer for a minimum of nine (9) months during the taxable year for which the credit is claimed.

(4) The credit allowed by this section shall not exceed sixty-two and five-tenths percent (62.5%) of the tax liability of the taxpayer.

(5) Employees transferred from a related taxpayer or acquired from another taxpayer within the prior twelve (12) months shall not be included in the computation of the credit unless the transfer creates a net new job in Idaho. [I.C., § 63-4405, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 4, p. 974.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 314, in subsection (1), substituted the year "2006" for "2005 and "2010" for "2009."

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively

to January 1, 2005. Approved April 13, 2005.

Section 6 of S.L. 2006, ch. 314 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-4406. Limitations, and other provisions on credits against income taxes. — (1) In addition to other needed rules, the state tax commission may promulgate rules prescribing:

(a) In the case of S corporations, partnerships, trusts or estates, a method of attributing a credit under this chapter to the shareholders, partners or beneficiaries in proportion to their share of the income from the S corporation, partnership, trust or estate; and

(b) The method by which the carryover of credits and the duty to recapture credits shall survive and be transferred in the event of reorganizations, mergers or liquidations.

(2) In the case of a unitary group of corporations filing a combined report under subsection (t) of section 63-3027, Idaho Code, credits against income tax provided by sections 63-4403, 63-4404 and 63-4405, Idaho Code, earned by one (1) member of the group but not used by that member may be used by another member of the group, subject to the limitation in subsection (3) of this section, instead of carried over. For a combined group of corporations, credit carried forward may be claimed by any member of the group unless the member or members who earned the credit are no longer included in the combined group.

(3) The total of all credits allowed by sections 63-4403, 63-4404 and 63-4405, Idaho Code, together with any credits carried forward under subsection (4) of this section shall not exceed the amount of tax due under sections 63-3024, 63-3025 and 63-3025A, Idaho Code, after allowance for all other credits permitted by this chapter, chapter 29, title 63, Idaho Code, and the Idaho income tax act.

(4) If the credits exceed the limitation under subsection (3) of this section, the excess amount may be carried forward for a period that does not exceed:

- (a) The next fourteen (14) taxable years in the case of credits allowed by sections 63-4403 and 63-4404, Idaho Code; or
- (b) The next ten (10) taxable years in the case of credits allowed by section 63-4405, Idaho Code. [I.C., § 63-4406, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 195, § 7, p. 599.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 195, inserted “chapter 29, title 63, Idaho Code” in subsection (3).

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively

to January 1, 2005. Approved April 13, 2005.

Section 8 of S.L. 2006, ch. 195, declared an emergency retroactively to January 1, 2006 and approved March 24, 2006.

63-4407. Recapture. — (1) In the event that any person to whom a tax credit allowed by section 63-4403, 63-4404 or 63-4405, Idaho Code, fails to meet the tax incentive criteria, the full amount of the credit shall be subject to recapture by the commission.

(2) If, during any taxable year, an investment in new plant is disposed of, or otherwise ceases to qualify with respect to the taxpayer, prior to the close of the recapture period, recapture of the credit allowed by sections 63-4403 and 63-4404, Idaho Code, shall be determined for such taxable year in the same proportion and subject to the same provisions as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(3) In the event that the employment level for which the credit allowed in section 63-4405, Idaho Code, is not maintained for the entire recapture period, recapture of the credit allowed in section 63-4405, Idaho Code, shall be determined for such taxable year in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code. This subsection shall not be construed to require that the required level of employment must be met by the same individual employees.

(4) Any amount subject to recapture is a deficiency in tax for the amount of the credit in the taxable year in which the disqualification first occurs and may be enforced and collected in the manner provided by the Idaho income tax act, provided however, that in lieu of the provisions of section 63-3068(a), Idaho Code, the period of time within which the commission may issue a notice under section 63-3045, Idaho Code, in regard to an amount subject to recapture shall be the later of five (5) years after the end of the taxable year in which the project period ends or three (3) years after the end of the taxable year in which any amounts carried forward under section 63-4406, Idaho Code, expire. [I.C., § 63-4407, as added by 2005, ch. 370, § 1, p. 1178; am. 2007, ch. 10, § 5, p. 10.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 10, in subsection (3), substituted “the employment level for which the credit allowed in section 63-4405” for “the employment re-

quired in section 63-4402(2)(j).”

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

63-4408. Sales and use tax incentives — Rebates — Recapture. —

(1) For calendar years beginning on January 1, 2006, and ending on December 31, 2010, subject to the limitations of this chapter, a taxpayer who has certified that the tax incentive criteria will be met within the project site shall be entitled to receive a rebate of twenty-five percent (25%) of all sales and use taxes imposed by chapter 36, title 63, Idaho Code, and that the taxpayer or its contractors actually paid in regard to any property constructed, located or installed within the project site during the project period for that site.

(2) Upon filing of a written refund claim by the taxpayer entitled to the rebate, and subject to such reasonable documentation and verification as the commission may require, the rebate shall be paid by the commission as a refund allowable under section 63-3626, Idaho Code. A claim for rebate under this section must be filed on or before the last day of the third calendar year following the year in which the taxes sought to be rebated were paid or the right to the rebate is lost.

(3) Any rebate paid shall be subject to recapture by the commission:

(a) At one hundred percent (100%) in the event that the tax incentive criteria are not met at the project site during the project period, or

(b) In the event that the property is not used, stored or otherwise consumed within the project site for a period of sixty (60) consecutive full months after the property was placed in service, or

(c) In the event that the employment required in section 63-4402(2)(j), Idaho Code, is not maintained for sixty (60) consecutive full months from the date the project period ends.

(d) Any recapture required by subsection (3)(b) or (3)(c) of this section shall be in the same proportion as an amount of credit required to be recaptured under section 63-3029B, Idaho Code.

(4) Any recapture amount due under this section shall be a deficiency in tax for the period in which the disqualification first occurs for purposes of section 63-3629, Idaho Code, and may be enforced and collected in the manner provided by the Idaho sales tax act, provided however, that in lieu of the provisions of section 63-3633, Idaho Code, the period of time within which the commission may issue a notice under section 63-3629, Idaho Code, in regard to an amount subject to recapture, shall be the later of five (5) years after the end of the taxable year, for income tax purposes, in which the project period ends.

(5) The rebate allowed by this section is limited to sales and use taxes actually paid by the taxpayer or its contractors for taxable property related to new plant and building facilities. [I.C., § 63-4408, as added by 2005, ch. 370, § 1, p. 1178; am. 2006, ch. 314, § 5, p. 974.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 314, in subsection (1), substituted the year “2006” for “2005” and “2010” for “2009”; and in subsection (5), substituted “new plant and building facilities” for “headquarters or administrative facilities.”

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

Section 6 of S.L. 2006, ch. 314 declared an emergency retroactively to January 1, 2006 and approved March 31, 2006.

63-4409. Administration. — The commission shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of those provisions, including the promulgation of rules relating to information necessary to certify that the incentive criteria have been or will be met. For the purpose of carrying out its duties to enforce or administer the provisions of this chapter, the commission shall have the powers and duties provided by sections 63-3038, 63-3039, 63-3042 through 63-3067, 63-3068, 63-3071, 63-3074 through 63-3078 and 63-217, Idaho Code. [I.C., § 63-4409, as added by 2005, ch. 370, § 1, p. 1178.]

STATUTORY NOTES

Effective Dates. — Section 4 of S.L. 2005, ch. 370 declared an emergency retroactively to January 1, 2005. Approved April 13, 2005.

TITLE 64

SALES

CHAPTER

1 — 10. [REPEALED.]

CHAPTER 1

UNIFORM LAW — FORMATION OF THE CONTRACT

SECTION.

64-101 — 64-116. [Repealed.]

64-101 — 64-116. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 1-16, p. 443; C.S., §§ 5673-5688; I.C.A., §§ 62-101 — 62-116, which constituted chapter 1, of the Uniform Sales Law, were repealed by S.L. 1967,

ch. 161, § 10-102. Such repeal did not affect transactions entered into prior to the effective date of chapter 161.

For present law, see chapter 2 of title 28.

CHAPTER 2

UNIFORM LAW — TRANSFER OF PROPERTY AS BETWEEN SELLER AND BUYER

SECTION.

64-201 — 64-224. [Repealed.]

64-201 — 64-224. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 17-40, p. 443; C.S., §§ 5689-5712; I.C.A., §§ 62-201 — 62-224, which constituted chapter 2 of the Uni-

form Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 2 of title 28.

CHAPTER 3

UNIFORM LAW — PERFORMANCE OF THE CONTRACT

SECTION.

64-301 — 64-311. [Repealed.]

64-301 — 64-311. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 52-62, p. 443; C.S., §§ 5724 — 5734; I.C.A., §§ 62-301 — 62-311, which constituted chapter 3 of the

Uniform Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 2 of title 28.

CHAPTER 4

UNIFORM LAW — RIGHTS OF UNPAID SELLER AGAINST THE GOODS

SECTION.

64-401 — 64-411. [Repealed.]

64-401 — 64-411. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 41-51, p. 443; C.S., §§ 5713-5723; I.C.A., §§ 62-401 — 62-411, which constituted chapter 4 of the Uni-

form Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 2 of title 28.

CHAPTER 5

UNIFORM LAW — ACTIONS FOR BREACH OF THE CONTRACT

SECTION.

64-501 — 64-508. [Repealed.]

64-501 — 64-508. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 63-70, p. 443; C.S., §§ 5735-5742; I.C.A., §§ 62-501 — 62-508, which constituted chapter 5 of the Uni-

form Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 2 of title 28.

CHAPTER 6

UNIFORM LAW — INTERPRETATION

SECTION.

64-601 — 64-609. [Repealed.]

64-601 — 64-609. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 149, §§ 71-78 and 81, p. 443; C.S., §§ 5743-5751; I.C.A., §§ 62-601 — 62-609, which constituted chapter 6 of the

Uniform Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 2 of title 28.

CHAPTER 7

BULK SALES LAW

SECTION.

64-701 — 64-705. [Repealed.]

64-701 — 64-705. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, comprising S.L. 1919, ch. 110, §§ 1-5, p. 392; C.S., §§ 5752-5756; I.C.A., §§ 62-701 — 62-705,

which constituted the Bulk Sales Law, were repealed by S.L. 1967, ch. 161, § 10-102. For present law, see chapter 6 of title 28.

CHAPTER 8**CONDITIONAL SALE CONTRACTS****SECTION.**

64-801 — 64-807. [Repealed.]

64-801 — 64-807. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, comprising S.L. 1921, ch. 153, §§ 1-5, p. 345; am. 1927, ch. 15, §§ 1-3, p. 20; 1931, ch. 184, § 1, p. 303; I.C.A., §§ 62-801 — 62-805; I.C., § 64-801A, as added by 1965, ch. 271, § 1, p. 540;

am. 1959, ch. 72, §§ 7, 8, p. 157; 1957, ch. 153, §§ 1, 2, p. 255, which concerned conditional sale contracts, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 9 of title 28.

CHAPTER 9**ASSIGNMENT OF ACCOUNTS RECEIVABLE****SECTION.**

64-901 — 64-907. [Repealed.]

64-901 — 64-907. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, comprising S.L. 1945, ch. 172, §§ 1-7, p. 259; am. 1959, ch. 172 §§ 1, 2, p. 392, which concerned

the assignment of accounts receivable, were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 9 of title 28.

CHAPTER 10**UNIFORM TRUST RECEIPTS ACT****SECTION.**

64-1001 — 64-1020. [Repealed.]

64-1001 — 64-1020. [Repealed.]**STATUTORY NOTES**

Compiler's Notes. — These sections, comprising S.L. 1945, ch. 73, §§ 1-20, p. 96, which constituted the Uniform Trust Receipts Act,

were repealed by S.L. 1967, ch. 161, § 10-102.

For present law, see chapter 9 of title 28.

TITLE 65

SOLDIERS AND SAILORS

CHAPTER.

1. SERVICEMEN'S MEMORIALS, §§ 65-101 — 65-108.
2. DIVISION OF VETERANS SERVICES — VETERANS AFFAIRS COMMISSION, §§ 65-201 — 65-208.
3. OFFICIAL SERVICES FOR VETERANS, §§ 65-301 — 65-303.

CHAPTER.

4. GRAND ARMY HEADQUARTERS. [REPEALED.]
5. RIGHTS AND PRIVILEGES OF VETERANS, §§ 65-501 — 65-515.
6. SERVICE OFFICERS FOR AID OF VETERANS, §§ 65-601, 65-602.

CHAPTER 1

SERVICEMEN'S MEMORIALS

SECTION.

- 65-101. County memorial commission — Creation and powers — Appropriation.
- 65-102. State and local appropriations — State aid — Character of memorial — Conditions precedent to state aid.
- 65-103. Special tax for upkeep of memorials.
- 65-104. Special tax for construction of memorials.

SECTION.

- 65-105. Permanent appropriation discontinued.
- 65-106. Appropriation — Application to legislature.
- 65-107. Veterans cemetery maintenance fund.
- 65-108. Idaho state veterans cemetery.

65-101. County memorial commission — Creation and powers — Appropriation. — There is hereby created a county commission to consist of the commander or commanders of the American Legion, other established and recognized body of World War veterans and county commissioners in each county in the state of Idaho, said commission to receive no compensation for their services and to determine the kind, character, design and style of memorial to be erected in any county in the state of Idaho to the memory of deceased soldiers, sailors and marines, who lost their lives in the late war with Germany and her allies. Said commission to have full power and authority to determine the kind, character, design and style of said memorial to be made for, and in behalf of, the citizens of this state. [1919, ch. 67, § 1, p. 242; am. 1921, ch. 219, § 1, p. 489; I.C.A., § 63-101.]

65-102. State and local appropriations — State aid — Character of memorial — Conditions precedent to state aid. — Each county or any association therein in the state of Idaho shall be entitled to receive from the state of Idaho, for the erection of such memorial, the sum of one thousand dollars (\$1,000) whenever the county commissioners of said county or any association therein shall appropriate at least one thousand dollars (\$1,000) to be used with the money granted by the state of Idaho for the erection of said memorial. Each memorial erected with the state aid hereinbefore provided for shall be of the character, design, and style decided upon by the said commission. And in addition to the appropriation of at least

one thousand dollars (\$1,000) to be made by each county or any association therein desiring to receive the sum of one thousand dollars (\$1,000) from the state of Idaho, the said county commissioners of said county or any association therein must provide a suitable location for the erection of said memorial, and also submit to the state controller the plans and specifications of its proposed memorial giving full details, and no portion of the sum hereby appropriated shall be paid to any county or any association therein until the county or said association shall certify to the state controller that at least one thousand dollars (\$1,000) has been appropriated and is available for the erection of said memorial and that a suitable site has been provided, and said plans and specifications have been approved by the said commission. [1919, ch. 67, § 2, p. 242; am. 1921, ch. 219, § 2, p. 489; I.C.A. § 63-102; am. 1994, ch. 180, § 159, p. 420.]

STATUTORY NOTES

Compiler's Notes. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to

state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 159 of S.L. 1994, ch. 180 became effective January 2, 1995.

65-103. Special tax for upkeep of memorials. — The board of county commissioners of each county within the state of Idaho is hereby authorized and empowered to levy annually a special tax not to exceed one hundredth percent (.01%) of the market value for assessment purposes on all the taxable property in the county for the purpose of creating a fund to be used in the maintenance, upkeep and repair, or in assisting in the maintenance, upkeep and repair of service men's memorials now constructed or hereafter to be constructed within the county by the county or any association therein under the provisions of sections 65-101 and 65-102, Idaho Code, or of any such memorial owned by the county: provided, the provisions of this section, and the benefits thereof, shall apply likewise to the repair and maintenance of service men's memorials now constructed or hereafter to be constructed where no state and/or county moneys were employed in the building of such memorial. [1927, ch. 40, § 1, p. 54; am. 1931, ch. 86, § 1, p. 145; I.C.A., § 63-103; am. 1995, ch. 82, § 30, p. 218.]

65-104. Special tax for construction of memorials. — The board of county commissioners of each county within the state of Idaho is hereby authorized and empowered to levy annually a special tax not to exceed five thousandths percent (.005%) of the market value for assessment purposes on all the taxable property in the county for the purpose of creating a fund to be used in paying not to exceed one-third ($\frac{1}{3}$) of the cost of construction of service men's memorials now constructed or hereafter to be constructed within the county. [1931, ch. 170, § 1, p. 284; I.C.A., § 63-104; am. 1995, ch. 82, § 31, p. 218.]

65-105. Permanent appropriation discontinued. — The appropriation heretofore made by §§ 65-101 and 65-102 [Idaho Code,] for soldiers'

memorials is hereby discontinued and the unexpended balance of said appropriation shall revert to the general fund. [1950 (E. S.), ch. 5, § 1, p. 15.]

65-106. Appropriation — Application to legislature. — Any county which has not availed itself of the appropriation heretofore made for the purpose of creating soldiers' memorials under the provisions of chapter 1, title 65, Idaho Code, and which may desire to construct such memorial, shall apply to the legislature for an appropriation for such purpose. [1950 (E. S.), ch. 5, § 2, p. 15.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1950 (E. S.), ch. 5 provided that said act should take effect on and after July 1, 1950.

65-107. Veterans cemetery maintenance fund. — (1) There is hereby created in the state treasury a fund to be known as the "veterans cemetery maintenance fund" to which shall be deposited the revenues derived from the program fees for special veterans motor vehicle license plates as provided in section 49-418, Idaho Code, gifts, grants, contributions and bequests to the fund, revenues derived from the sale of state commemorative silver medallions as authorized in section 67-1223, Idaho Code, and any other moneys as may be provided by law. Interest earned on idle moneys in the veterans cemetery maintenance fund shall be paid to such fund.

(2) Moneys in the fund shall be used exclusively for the purposes of operating, maintaining and acquiring services and personal property for a state veterans cemetery, and moneys shall be continuously appropriated for such purposes. [I.C., § 65-107, as added by 2000, ch. 464, § 2, p. 1437; am. 2001, ch. 199, § 1, p. 678; am. 2002, ch. 49, § 1, p. 110; am. 2003, ch. 42, § 1, p. 163; am. 2003, ch. 369, § 3, p. 979; am. 2005, ch. 337, § 1, p. 1054.]

STATUTORY NOTES

Effective Dates. — Section 5 of S.L. 2002, ch. 49 declared an emergency. Approved February 27, 2002.

65-108. Idaho state veterans cemetery. — The operation, management and control, maintenance and improvement of the lands and property belonging to the state of Idaho or acquired by the state of Idaho, for a state veterans cemetery is hereby vested in the division of veterans services. Title to real property belonging to the state of Idaho for a veterans cemetery shall be vested in the state board of land commissioners. The state board of land commissioners may purchase, receive by donation or in any manner acquire real property on behalf of the state of Idaho for a veterans cemetery, within the limit of funds available therefore. The state veterans cemetery shall not be subject to local land use planning ordinances established pursuant to chapter 65, title 67, Idaho Code. [I.C., § 65-108, as added by 2002, ch. 49, § 2, p. 110.]

STATUTORY NOTES

Cross References. — Division of veterans services, § 65-201 et seq.

Effective Dates. — Section 5 of S.L. 2002,

ch. 49 declared an emergency. Approved February 27, 2002.

CHAPTER 2

DIVISION OF VETERANS SERVICES — VETERANS AFFAIRS COMMISSION

SECTION.

- 65-201. Division of veterans services — Creation of commission — Appointment of members — Discontinuance of commission — Receipt of property.
- 65-202. Powers and duties.
- 65-203. "Veteran" defined.
- 65-204. Rules — Employment of assistants.

SECTION.

- 65-205. [Repealed.]
- 65-206. Compensation and traveling expenses of commissioners.
- 65-207. Construction with other laws — Separability.
- 65-208. Transportation of wheelchair-bound veterans — Creation of veterans transportation fund.

65-201. Division of veterans services — Creation of commission — Appointment of members — Discontinuance of commission — Receipt of property. — (1) There is hereby established in the department of self-governing agencies the division of veterans services. The division shall be headed by an administrator who shall be appointed by the governor from a nomination list of eligible candidates for administrator submitted by the veterans affairs commission. The administrator may be removed from office by the governor only with the consent of the veterans affairs commission.

(2) There is hereby created an advisory commission to be known as the Idaho veterans affairs commission to consist of five (5) persons, all of whom shall be appointed by the governor of the state of Idaho. Said appointees shall have had active service in any war or conflict officially engaged in by the government of the United States and have been honorably discharged from such service. No more than two (2) of said commission shall be residents of the same judicial district of the state of Idaho. Upon the expiration of a member's term, the subsequent appointment shall be made by the governor and shall be for a term of three (3) years. Such subsequent terms shall expire on the third Monday in January of the appropriate year. The governor shall have power to fill any and all vacancies occurring in said commission. The governor shall have the further full power to discontinue said commission by proclamation whenever the governor determines that the government of the United States, or the state of Idaho, shall have made adequate provision for the care and assistance of honorably discharged and destitute veterans of the armed forces.

(3) All rights, title and interest in property, real and personal, held by the department of health and welfare for use in exercising the powers and duties transferred to the division of veterans services by chapter 59, laws of 2000, are hereby transferred to and vested in the division of veterans services. [1921, ch. 46, § 1, p. 73; I.C.A., § 63-201; am. 1957, ch. 132, § 1, p. 222; am. 1969, ch. 37, § 1, p. 91; am. 1974, ch. 23, § 174, p. 633; am. 1985, ch. 186, § 1, p. 482; am. 1990, ch. 56, § 3, p. 127; am. 2000, ch. 59, § 2, p. 125; am. 2006, ch. 33, § 1, p. 97.]

STATUTORY NOTES

Cross References. — Idaho veterans' homes, § 66-901 et seq.

Amendments. — The 2006 amendment, by ch. 33, added "receipt of property" at the end of the section heading and added subsection (3).

Effective Dates. — Section 2 of S.L. 2006, ch. 33 declared an emergency. Approved March 11, 2006.

65-202. Powers and duties. — The administrator of the division of veterans services shall have full power and authority on behalf of the state of Idaho, in recognition of the services rendered by veterans of the armed forces of the United States, to:

(1) Oversee the management and operation of the veterans homes in the state and the state veterans cemetery, and provide care to veterans of the armed forces of the United States under such rules as the administrator may from time to time adopt.

(2) Extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such disabled or destitute wartime veterans as the commission shall determine to be reasonably required under such rules as the administrator may, from time to time, adopt.

(3) Collect benefits paid by the United States department of veterans affairs for burial and plot allowance for persons interred at the state veterans cemetery.

(4) Prescribe, with the approval of the commission, the qualifications of all personnel in accordance with the Idaho personnel system law. The administrators in charge of state veterans homes, the office of veterans advocacy, and the state veterans cemetery, shall be considered nonclassified exempt employees pursuant to the provisions of chapter 53, title 67, Idaho Code, and shall serve at the pleasure of the administrator of the division of veterans services.

(5) Accept gifts, grants, contributions and bequests of funds, and personal property to the state of Idaho for the benefit of veterans of the armed forces of the United States.

(6) Enter into contracts, within the limit of funds available therefor, acquire services and personal property, and do and perform any acts that may be necessary in the administration of services to veterans of the armed forces of the United States.

(7) Administer, with the advice and approval of the commission, moneys in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(8) Establish by rule charges related to interment, disinterment and reinterment in the state veterans cemetery and the administrator is hereby directed to cause such charges to be deposited in the veterans cemetery maintenance fund established in section 65-107, Idaho Code.

(9) In his discretion, assume control of the cremated remains of deceased persons qualified for interment in the state veterans cemetery, apply for burial and plot allowance benefits paid by the United States department of veterans affairs for such deceased persons and inter in the state veterans cemetery the cremated remains of deceased persons qualified for interment

in the state veterans cemetery. [1921, ch. 46, § 2, p. 73; I.C.A., § 63-202; am. 1943, ch. 20, § 1, p. 47; am. 1957, ch. 132, § 2, p. 222; am. 1969, ch. 37, § 2, p. 91; am. 1974, ch. 23, § 175, p. 633; am. 1990, ch. 56, § 4, p. 127; am. 2000, ch. 59, § 3, p. 125; am. 2001, ch. 198, § 1, p. 676; am. 2001, ch. 199, § 2, p. 678; am. 2002, ch. 49, § 3, p. 110; am. 2002, ch. 54, § 1, p. 122; am. 2003, ch. 42, § 2, p. 163; am. 2003, ch. 53, § 2, p. 194; am. 2004, ch. 318, § 13, p. 892; am. 2005, ch. 337, § 2, p. 1054; am. 2007, ch. 16, § 1, p. 27.]

STATUTORY NOTES

Cross References. — Guardianship, veterans' benefits, §§ 15-5-105 and 15-5-106.

Idaho veterans' homes, § 66-901 et seq.

Public officials to perform duties concerning discharge papers and benefit claims without fee, §§ 31-3213 and 65-301.

Amendments. — This section was amended by two 2001 acts — ch. 198, § 1 and ch. 199, § 2, both effective July 1, 2001, which do not appear to conflict and have been compiled together.

The 2001 amendment, by ch. 198, § 1, rewrote the first paragraph which read: "The administrator of the division of veterans services shall have full power and authority on behalf of the state of Idaho, in recognition of the services rendered by disabled or destitute servicemen and servicewomen honorably discharged from the armed forces of the United States, to oversee the management and operation of the veterans homes in the state, and provide such care and extend such financial relief and assistance to said disabled or destitute, honorably discharged servicemen and servicewomen and to those dependent upon such honorably discharged, disabled or destitute servicemen and servicewomen as the commission shall determine to be reasonably required by such disabled or destitute servicemen and servicewomen and their dependents under such rules as the administrator may, from time to time adopt; and said administrator shall have power and authority to render such financial assistance to any person honorably discharged from the armed forces of the United States, regardless of the period during which he or she shall have served; provided, however, that no financial aid or direct relief shall be granted to any discharged person unless he or she shall have served during one (1) of the periods hereinafter referred to and shall come under the definition of veteran set out in section 65-203, Idaho Code" and at the end of the second paragraph, substituted "the division of veterans services" for "veterans homes."

The 2001 amendment, by ch. 199, § 2, divided the present first sentence into two sentences, in the present first sentence, substituted "veterans of the armed forces of the United States" for "disabled or destitute ser-

vicemen and servicewomen honorably discharged from the armed forces of the United States", also in the first sentence, inserted "and the state veterans cemetery" following "veterans homes in the state", substituted "and provide such care to veterans of the armed forces of the United States" and added the present second sentence which reads: "Further, the administrator shall extend financial relief and assistance to disabled or destitute wartime veterans and to those dependent upon such wartime veterans as the commission shall determine to be reasonably required" for "and provide such care and extend such financial relief and assistance to said disabled or destitute, honorably discharged servicemen and servicewomen and those dependent upon such honorably discharged, disabled or destitute servicemen and servicewomen as the commission shall determine to be reasonably required", deleted "by such disabled or destitute servicemen and servicewomen and their dependents under such rules as the administrator may, from time to time adopt; and said administrator shall have power and authority to render such financial assistance to any person honorably discharged from the armed forces of the United States, regardless of the period during which he or she shall have served; provided, however, that no financial aid or direct relief shall be granted to any discharged person unless he or she shall have served during one (1) of the periods hereinafter referred to and shall come under the definition of veteran set out in section 65-203, Idaho Code", added the last sentence and in the second paragraph inserted "the division of" preceding "veterans" and substituted "services" for "homes" following "veterans."

This section was amended by two 2002 acts — ch. 49, § 3, effective retroactively to November 1, 2001, and ch. 54, § 1, effective July 1, 2002, which appear to be in conflict.

The 2002 amendment, by ch. 49, § 3, divided the section into seven paragraphs and added the subsection designations; at the end of subsection (1) substituted "under such rules as the administrator may from time to time adopt" for "Further, the administrator shall"; at the end of subsection (2) deleted

“The administrator is further authorized to”; in the middle of subsection (3) added “the administrator is hereby”; rewrote subsection (4), which formerly read: “With the approval of the commission, the administrator may prescribe the qualifications of all personnel on a nonpartisan merit basis in accordance with the Idaho personnel system law for employment of personnel in the division of veterans services”; added subsections (5) through (7); and made related changes.

The 2002 amendment, by ch. 54, § 1, added the second sentence in present subsection (4).

This section was amended by two 2003 acts — ch. 42, § 2, and ch. 53, § 2, both effective July 1, 2003, which do not conflict and have been compiled together.

The 2003 amendment, by ch. 42, added subsection (8).

The 2003 amendment, by ch. 53, also added subsection (8), which was temporarily redesignated as [(9)] (8). The redesignation was made permanent by S.L. 2004, ch. 318, § 13.

The 2007 amendment, by ch. 16, inserted “and the state veterans cemetery,” following “advocacy” in subsection (4).

Effective Dates. — Section 5 of S.L. 2002, ch. 49 declared an emergency. Approved February 27, 2002.

Section 14 of S.L. 2004, ch. 318 declared an emergency. Approved March 24, 2004.

65-203. “Veteran” defined. — (1) The term “veteran,” as used in this chapter, shall include any person who is a bona fide resident of the state of Idaho, who served on active duty in the United States military, naval, or air service and was discharged or separated under honorable conditions after ninety (90) days of continuous active duty, or was separated or discharged from military service earlier than ninety (90) days under honorable conditions because of a service-connected disability.

(2) The term “wartime veteran,” as used in this chapter, shall include any person who is a bona fide resident of the state of Idaho who served on active duty in the United States armed forces at some time during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), who was separated or discharged under honorable conditions after ninety (90) days of continuous active duty or was separated or discharged from military service earlier under honorable conditions because of a service-connected disability. [1921, ch. 46, § 3, p. 73; I.C.A., § 63-203; am. 1935, ch. 130, § 1, p. 305; am. 1943, ch. 20, § 2, p. 47; am. 1949, ch. 28, § 1, p. 47; am. 1957, ch. 132, § 3, p. 222; am. 1969, ch. 37, § 3, p. 91; am. 1976, ch. 216, § 1, p. 787; am. 1991, ch. 219, § 3, p. 523; am. 1992, ch. 53, § 1, p. 157; am. 2001, ch. 198, § 2, p. 676.]

STATUTORY NOTES

Cross References. — Admission and charges to veterans’ homes, § 66-907.

Effective Dates. — Section 4 of S.L. 1943, ch. 20 declared an emergency. Approved February 2, 1943.

Section 4 of S.L. 1992, ch. 53 declared an emergency. Approved March 19, 1992.

RESEARCH REFERENCES

Am. Jur. — 77 Am. Jur. 2d, Veterans and Veterans’ Laws, § 1.

65-204. Rules — Employment of assistants. — The commission shall advise the administrator of the division of veterans services in the adoption of rules with respect to all matters of administration hereunder, including

the establishment of standards and criteria for interment at the state veterans cemetery, and to carry into effect the purposes of this chapter and employ such assistants as it may deem advisable. The commission is authorized to name the administrator of the division of veterans services as executive secretary. [1921, ch. 46, § 4, p. 73; I.C.A., § 63-204; am. 1957, ch. 132, § 4, p. 222; am. 1974, ch. 23, § 176, p. 633; am. 1990, ch. 56, § 5, p. 127; am. 2000, ch. 59, § 4, p. 125; am. 2001, ch. 199, § 3, p. 678.]

STATUTORY NOTES

Cross References. — Idaho veterans' homes, § 66-901 et seq. 1974, ch. 23 provided that the act should take effect on and after July 1, 1974.

Effective Dates. — Section 182 of S.L.

65-205. Expenditure of funds — Emergency expenditures. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which § 63-205; am. 1994, ch. 180, § 160, p. 420, comprised 1921, ch. 46, § 6, p. 73; I.C.A., was repealed by S.L. 2001, ch. 199, § 4.

65-206. Compensation and traveling expenses of commissioners.

— The members of said commission shall be compensated as provided by section 59-509(h), Idaho Code. [1921, ch. 46, § 7, p. 73; I.C.A., § 63-206; am. 1957, ch. 132, § 5, p. 222; am. 1976, ch. 182, § 1, p. 656; am. 1980, ch. 247, § 80, p. 582; am. 1991, ch. 150, § 1, p. 360.]

STATUTORY NOTES

Compiler's Notes. — Section 7 of S.L. 1957, ch. 132, read: "The provisions of this act are hereby declared to be separable and if any section, clause or phrase thereof is hereafter declared unconstitutional, the same shall not affect the validity of remaining portions of this act."

Effective Dates. — Section 8 of S.L. 1957, ch. 132 provided said act should be in full force and effect on and after September 1, 1957.

65-207. Construction with other laws — Separability. — No act or portion of act in conflict with this chapter shall be construed as invalidating this chapter or any portion thereof. Should any portion of this chapter be declared unconstitutional, it shall not invalidate the other provisions thereof. [1921, ch. 46, § 8, p. 73; I.C.A., § 63-207.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1921, ch. 46 declared an emergency. Approved March 1, 1921.

65-208. Transportation of wheelchair-bound veterans — Creation of veterans transportation fund. — (1) Legislative intent. A transportation network operated by volunteers provides veterans in the

state of Idaho with van transportation to and from medical appointments. Due to insurance and liability issues, this network is unable to transport disabled veterans who are confined to wheelchairs. As a result, wheelchair-bound veterans must hire private vans with wheelchair lifts in order to obtain medical treatment. As provided in this section, the veterans transportation fund is intended to financially assist these disabled veterans in obtaining necessary transportation.

(2) Veterans transportation fund. There is hereby created and established in the state treasury a fund to be known as the "veterans transportation fund," which shall consist of such funds as may be appropriated for that purpose by the legislature, grants, donations or moneys from other sources. The fund shall be administered by the division of veterans services, as created in section 65-201, Idaho Code, in order to provide moneys for a voucher system for transportation services for wheelchair-bound veterans who need transportation to and from medical appointments. Moneys in the fund may be expended pursuant to appropriation. Any interest earned on the investment of idle moneys in the fund shall be returned to the fund. [I.C., § 65-208, as added by 2002, ch. 228, § 1, p. 655.]

STATUTORY NOTES

Prior Laws. — Former § 65-208, comprising I.C., § 65-208, as added by S.L. 1955, ch. 168, § 3, p. 338, granting the veterans' wel-

fare commission authority to maintain and operate the Soldiers' Home at Boise, was repealed by S.L. 1957, ch. 132, § 6, p. 222.

CHAPTER 3

OFFICIAL SERVICES FOR VETERANS

SECTION.

65-301. Performance without fee — Services enumerated.

65-302. Parties authorized to request services.

SECTION.

65-303. Violation a misdemeanor.

65-301. Performance without fee — Services enumerated. —

(1) Any state, county, city or public officer, or board, or body, acting in his or her or its official capacity on behalf of the state, county, or city, including notaries public, shall not collect, demand or receive any fee or compensation for recording or indexing the discharge papers of any male or female veteran who had active service in any war or conflict officially engaged in by the government of the United States; or for issuing certified copies thereof, or for any service whatever rendered by any such officer or officers, in the matter of a pension claim, application, affidavit, voucher, or in the matter of any claim to be presented to the United States department of veterans affairs or for the purposes of securing any benefits under acts of congress providing pension benefits for honorably discharged veterans of any war, and all acts or parts of acts amendatory thereto, or for furnishing a certified copy of the public record of a marriage, death, birth, divorce, deed of trust, mortgage, or property assessment, or making a reasonable search for the same, wherein the same is to be used in a claim for pension, or a claim for allotment,

allowance, compensation, insurance, automatic insurance, or otherwise provided for by any and all legislation by congress providing pension benefits for honorably discharged veterans of any war.

(2) Any veteran wishing to record his or her discharge papers may do so with personal identifying information such as date of birth, social security number, home address(es), blood type and other personal identifying information redacted from the document. The name of the veteran may not be redacted from the document.

(3) Any veteran or surviving spouse of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian has the right to request that a county recorder remove from the official records any of the following forms recorded before, on or after July 1, 2003, by or on behalf of the requesting veteran: DD-214; DD-215; WD AGO 53; WD AGO 55; WD AGO 53-55; NAVMC 78-PD; and NAVPERS 553. The request must specify the identification page number of the form to be removed. The request shall be made in person and with appropriate identification to allow determination of identity. The county recorder has no duty to inquire beyond the requestor to verify the identity of the person requesting removal. No fee shall be charged for the removal. Any paper and reasonably retrievable electronic likeness, the removal of which will not affect other recorded documents, shall be removed from the record.

(4) No DD-214, DD-215, WD AGO 53, WD AGO 55, WD AGO 53-55, NAVMC 78-PD, and NAVPERS 553, which is recorded at the request of any veteran of the United States armed forces or his or her surviving spouse, attorney, personal representative, executor or court appointed guardian shall be a public record subject to release by the provisions of sections 9-337 through 9-350, Idaho Code, without the express written consent of one (1) of the above enumerated individuals.

(5) Nothing in this section shall create or permit any cause of action against a county, county employee or the state of Idaho based upon harm caused by information released from the records of the county. [1927, ch. 110, § 1, p. 152; I.C.A., § 63-301; am. 1969, ch. 25, § 1, p. 49; am. 1995, ch. 3, § 1, p. 9; am. 2003, ch. 26, § 1, p. 95.]

STATUTORY NOTES

Cross References. — County officers not to charge fees for services in pension and other matters, § 31-3213.

65-302. Parties authorized to request services. — Said services shall be rendered on the request of an official of the United States department of veterans affairs, the claimant, his or her guardian, personal representative, dependent or attorney. [1927, ch. 110, § 2, p. 152; I.C.A., § 63-302; am. 1995, ch. 3, § 2, p. 9.]

65-303. Violation a misdemeanor. — The demanding, collection or receiving of any compensation or fee by the officers mentioned in this

chapter shall be deemed a misdemeanor. [1927, ch. 110, § 3, p. 152; I.C.A., § 63-303.]

STATUTORY NOTES

Cross References. — Penalty for misdemeanor when not otherwise provided, § 18-113.

CHAPTER 4

GRAND ARMY HEADQUARTERS

SECTION.

65-401 — 65-403. [Repealed.]

65-401 — 65-403. Grand army headquarters. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1907, p. 152, §§ 1-4; R. C., §§ 854-856; 1909, p. 7; C.L., §§ 854-856; C.S., §§ 1287-1289; 1923, ch. 183, § 1; I.C.A., §§ 63-401 — 63-403, were repealed by § 1 of S.L. 1949, ch. 4.

CHAPTER 5

RIGHTS AND PRIVILEGES OF VETERANS

SECTION.

65-501. Statement of purpose.

65-502. Definitions.

65-503. Preference to be given qualified veterans, spouses, widows and widowers by public employers.

65-504. Basic preference and addition of points to competitive examination ratings.

65-505. Officials to observe preference — Exceptions.

65-506. Failing or refusing to give preference — Civil liability.

SECTION.

65-507. Application of chapter limited.

65-508. Reemployment and leave of absence.

65-509. Males of or over eighteen years of age empowered to contract under G.I. Bill of Rights.

65-510. Relation to other laws.

65-511. Severability.

65-512 — 65-514. [Repealed.]

65-515. [Amended and Redesignated.]

65-501. Statement of purpose. — It is the intent of the legislature to honor veterans of the armed forces by providing preference in initial appointments to public sector jobs in Idaho. Veteran's preference is intended to honor those citizens who have served their country in active duty by providing veterans a more favorable competitive position for government employment and acknowledging the larger sacrifice of disabled veterans. Eligible veterans are provided advantages in public employment in Idaho, including preference for initial employment and retention in the event of layoffs. Veteran's preference requires public employers to provide additional consideration for eligible veterans, but it does not guarantee the veteran a job. [I.C., § 65-501, as added by 2006, ch. 51, § 1, p. 145.]

STATUTORY NOTES

Compiler's Notes. — Former § 65-501 was amended and redesignated as § 65-509 by S.L. 2006, ch. 51, § 12.

65-502. Definitions. — As used in this chapter:

(1) "Armed forces" means the army, navy, marine corps, coast guard, air force, and the reserve components thereof.

(2) "Disabled veteran" means those honorably separated veterans who:

(a) Qualify as disabled veterans because they have served on active duty in the armed forces and have a current service-connected disability of ten percent (10%) or more or are receiving compensation related to a service-connected disability including retirement benefits or pension from the military or the department of veterans affairs; or

(b) Are purple heart recipients.

(3) "Honorable conditions" means an honorable discharge or a general discharge "under honorable conditions."

(4) "Initial appointment" means the first time a qualified veteran is hired by a county or a municipal government or the state, provided however, subsequent separation from the county, municipal government or the state shall not result in the award of new preference or preference points with that governmental entity. "Initial appointment" shall not include:

(a) Jobs held by patients, inmates or students in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(5) "Key employee" means an individual specifically hired for an "at will" or nonclassified position for which there is no selection process, such as a position as a private secretary or deputy of an official or department who holds a confidential relationship to the appointing or employing officer.

(6) "Military duty" means training and service performed by an inductee, enlistee or reservist or any entrant into a component of the armed forces of the United States, provided "military duty" shall not include active duty training as a reservist in the armed forces of the United States or as a member of the national guard of the United States where the call is for training only.

(7) "Position" means a job held by a public employee but shall not include:

(a) A job held by a patient, inmate or student in or enrolled at a state institution;

(b) Temporary or casual employment; or

(c) An office filled by election.

(8) "Public employee" means any person holding a position in public employment.

(9) "Public employer" means any government, department or agency mentioned in subsection (10) of this section employing a public employee in a position.

(10) "Public employment" means employment of the government of this state, or of any county, municipality or other political subdivision of the state, including any department or agency thereof.

(11) "Register" means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established in a civil service system.

(12) "Service-connected disability" means that the veteran is disabled due to injury or illness that was incurred in or aggravated by military service as certified by the federal veterans administration or an agency of the department of defense.

(13) "Temporary or casual employment" means employment for a brief, nonrecurrent period where there is no reasonable expectation that such employment will continue indefinitely or for a significant period of time.

(14) "Veteran" means any person who has:

(a) Served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(b) Served on active duty as defined in 38 U.S.C. section 101(21) at any time in the armed forces for a period of more than one hundred eighty (180) consecutive days, any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under 10 U.S.C. section 12103(d) pursuant to an enlistment in the army national guard or the air national guard or as a reserve for service in the army reserve, naval reserve, air force reserve, marine corps reserve or coast guard reserve;

(c) Served on active duty as defined in 38 U.S.C. section 101(21) in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992; or

(d) Served as may be further defined in 38 U.S.C. section 101(11). [I.C., § 65-502, as added by 2006, ch. 51, § 2, p. 145.]

STATUTORY NOTES

Compiler's Notes. — Former § 65-502 was amended and redesignated as § 65-503 by S.L. 2006, ch. 51, § 4.

65-503. Preference to be given qualified veterans, spouses, widows and widowers by public employers. — (1) Eligibility for preference.

(a) Veterans and disabled veterans as defined in section 56-502 [65-502], Idaho Code;

(b) A widow or widower of any veteran as long as he or she remains unmarried;

(c) The wife or husband of a service-connected disabled veteran if the veteran cannot qualify for any public employment because of a service-connected disability.

(2) Employer obligations.

(a) Public employers must give notice in all announcements and advertisements of vacancies that preference in appointment will be given to eligible veterans, and application forms must inquire whether the applicant is claiming veteran's preference and whether the applicant has

previously claimed such a preference. An applicant claiming preference is responsible for providing required documentation at the time of making application. The employer must inform applicants of the requirements for documentation.

(b) In all public employment, excluding key employee positions, the hiring official shall give preference to the employment of veterans.

(c) An application for appointment to a public employment position will be accepted after the closing date of the examination from a person who was serving in the armed forces, or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of his or her separation from the armed forces or hospitalization and prior to the expiration of any register established as a result of the examination.

(d) A disabled veteran may file an application at any time up until a selection has been made for any position for which a register is then maintained as a source for future job openings, or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. If a register is not used as part of the selection process, a disabled veteran may file an application after the closing date, but such application will only be considered if a selection has not been made and the selection process is still active.

(e) An appointing authority may refuse to accept an application from an otherwise qualified veteran who is deemed unqualified through his or her actions. Examples of such actions include dismissal for cause from a public entity, a felony conviction, or conduct unbecoming a public employee. Such refusal must be supported by good cause and is appealable pursuant to section 65-506, Idaho Code. [1949, ch. 279, § 2, p. 571; am. 1972, ch. 51, § 1, p. 90; am. 1973, ch. 95, § 1, p. 163; am. 1976, ch. 197, § 1, p. 717; am. 1985, ch. 150, § 1, p. 400; am. 1991, ch. 303, § 1, p. 797; am. and redesiɡ. 2006, ch. 51, § 4, p. 145.]

STATUTORY NOTES

Cross References. — Carey Act entries, veterans' preference, §§ 42-2013, 42-2014.

Guardianship, veterans' benefits, §§ 15-5-105, 15-5-106.

Idaho veterans' homes, § 66-901 et seq.

Public officials, performance of duties concerning discharge papers and benefit claims without fee, §§ 31-3213, 65-301.

Prior Laws. — Former § 65-503, which

comprised 1949, ch. 279, § 3, p. 571; am. 1972, ch. 51, § 2, p. 90, was repealed by S.L. 2006, ch. 51, § 3.

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-502.

Compiler's Notes. — The bracketed reference in paragraph (1)(a) was added by the compiler to correct the enacted citation.

RESEARCH REFERENCES

Am. Jur. — 77 Am. Jur. 2d, Veterans and Veteran's Laws, § 82 et seq.

65-504. Basic preference and addition of points to competitive examination ratings. — (1) An individual who qualifies for a veteran's employment preference is entitled to a preference in initial appointment with a public employer over other applicants for the same position who are not more qualified.

(2) Five (5) percentage points shall be added to the earned rating of any veteran and the widow or widower of any veteran as long as he or she remains unmarried, when required to take competitive examination for any position in any state department, county or municipal government, which may now or which may hereafter require competitive examination under merit system or civil service plan of selecting employees: The names of all five (5) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veteran's preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(3) Ten (10) percentage points shall be added to the earned rating of veterans discharged under honorable conditions who qualify as disabled veterans because they have served on active duty in the armed forces at any time and have a current service-connected disability of ten percent (10%) or more. Alternatively, ten (10) percentage points shall be added to the earned rating of the widow or widower of any disabled veteran as long as he or she remains unmarried or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. The names of all ten (10) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. The additional points added by reason of veteran's preference shall be used only for the purpose of initial appointment and not for the purpose of any promotion, transfer or reassignment.

(4) Veterans discharged under honorable conditions who served on active duty in the armed forces at any time and have a current service-connected disability of thirty percent (30%) or more shall be offered an interview if they are one (1) of the top ten (10) qualified applicants. If applicants are not ranked, an interview must be offered to such veterans who fully meet all qualifications for the position. Notwithstanding this subsection, employers shall not be required to interview more than a total of ten (10) applicants regardless of the number of such qualified veteran applicants. [1949, ch. 279, § 6, p. 571; am. 1972, ch. 51, § 5, p. 90; am. 1972, ch. 356, § 1, p. 1060; am. 2001, ch. 214, § 1, p. 844; am. 2002, ch. 134, § 1, p. 365; am. and redesign. 2006, ch. 51, § 5, p. 145.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-506 and rewrote the section.

Compiler's Notes. — Former § 65-504 was amended and redesignated as § 65-505

by S.L. 2006, ch. 51, § 6.

Effective Dates. — Section 3 of S.L. 2002, ch. 134 declared an emergency. Approved March 20, 2002.

65-505. Officials to observe preference — Exceptions. — All elective officers, department heads, boards, commissions and/or other public officials of all state, county or municipal governments and departments and all political subdivisions thereof, who may be authorized to select or hire employees, are hereby required to strictly observe this preference for veterans and disabled veterans when implementing a reduction in force, filling vacancies or selecting new employees, provided that this chapter shall not apply to key employee positions. This preference shall be granted without regard to political affiliation or endorsements to veterans and disabled veterans who are qualified for the position or positions to be filled. In the event of an emergency which may endanger the health, safety, and public welfare, the provisions of this chapter may be dispensed with temporarily, but in no event shall persons who were employed to meet such emergencies be permitted to work for a period of time exceeding ninety (90) days, except such employees who meet all the requirements provided for in the chapter. [1949, ch. 279, § 4, p. 571; am. 1972, ch. 51, § 3, p. 90; am. 1985, ch. 150, § 2, p. 400; am. 1991, ch. 303, § 2, p. 797; am. and redesignig. 2006, ch. 51, § 6, p. 145.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-504 and rewrote the section.

Compiler's Notes. — Former § 65-505 was amended and redesignated as § 65-506 by S.L. 2006, ch. 51, § 7.

65-506. Failing or refusing to give preference — Civil liability. —

(1) Individuals who believe they have been denied a right or benefit under this chapter may file an appeal with the governing body of such jurisdiction or unit of government within thirty-five (35) days of the alleged denial of preference. If an appeal process does not exist for that jurisdiction or unit of government, the complainant may file directly in district court.

(2) The division of veterans services is authorized and directed to issue rules for the enforcement of this chapter. Such rules shall include, but are not limited to, procedures public employers may implement for an internal process which must be exhausted prior to gaining access to the courts.

(3) Any public employer who deliberately or willfully refuses or fails to give preference to qualified veterans required by the provisions of this chapter shall be subject to writs of mandate pursuant to sections 7-301 through 7-314, Idaho Code, and if found in violation of any such provisions shall be required to pay the costs of suit and reasonable attorney's fees incurred in such action, and may further be required to employ or reemploy the veteran, and shall be required to pay as damages such amount as the court may award, but in no event shall the amount of such damages and costs of suit exceed the sum of five thousand dollars (\$5,000) or ten percent (10%) of the annual salary of the position, whichever is higher. Such action must be commenced not more than one hundred eighty (180) days from the alleged denial of preference, provided however, applicants for classified state employment remain subject to the procedures set forth in section 67-5316, Idaho Code. If an appeal process is in place pursuant to subsection

(1) of this section, the one hundred eighty (180) days will not begin until that process has been exhausted. [1949, ch. 279, § 5, p. 571; am. 1972, ch. 51, § 4, p. 90; am. and redesiɡ. 2006, ch. 51, § 7, p. 145.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-505 and rewrote the section.

Compiler's Notes. — Former § 65-506 was amended and redesignated as § 65-504 by S.L. 2006, ch. 51, § 5.

65-507. Application of chapter limited. — This chapter shall not apply to work performed where federal funds are contributed, if in conflict with federal laws or regulations which restrict employment eligibility to specific individuals or groups. [1949, ch. 279, § 9, p. 571; am. and redesiɡ. 2006, ch. 51, § 9, p. 145.]

STATUTORY NOTES

Prior Laws. — Former § 65-507, which comprised 1949, ch. 279, § 7, p. 571; am. 1969, ch. 4, § 1, p. 39; am. 1976, ch. 216, § 2, p. 787; am. 1991, ch. 219, § 4, p. 523; am. 2001, ch. 214, § 2, p. 844, was repealed by S.L. 2006, ch. 51, § 8.

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-508 and rewrote the section.

Effective Dates. — Section 10 of S.L. 1949, ch. 279 declared an emergency. Approved March 16, 1949.

65-508. Reemployment and leave of absence. — All public employers shall comply with the reemployment, leave of absence, and other provisions of the uniformed services employment and reemployment rights act, 38 U.S.C. section 4301, et seq. [I.C., § 65-508, as added by 2006, ch. 51, § 10, p. 145.]

STATUTORY NOTES

Compiler's Notes. — Former § 65-508 was amended and redesignated as § 65-507 by S.L. 2006, ch. 51, § 9.

65-509. Males of or over eighteen years of age empowered to contract under G.I. Bill of Rights. — Males of the age of eighteen (18) years and over are expressly authorized to incur obligations and enter into necessary contracts to comply with the requirements of the federal "G.I. Bill of Rights" (being the act of June 22, 1944 (58 Stat. 291, 38 U.S.C.A. 694) and acts amendatory thereof or supplemental thereto). A minor can not disaffirm such contract if otherwise valid. [1946 (1st E. S.), ch. 22, § 1, p. 25; am. and redesiɡ. 2006, ch. 51, § 12, p. 145.]

STATUTORY NOTES

Prior Laws. — Former § 65-509, which comprised 1951, ch. 64, § 1, p. 93; am. 1967, ch. 175, § 5, p. 583; am. 1991, ch. 219, § 5, p. 523; am. 1996, ch. 70, § 1, p. 216, was repealed by S.L. 2006, ch. 51, § 11.

Amendments. — The 2006 amendment, by ch. 51, redesignated this section from § 65-501.

Federal References. — The federal "G. I. Bill of Rights" referred to in this section is the

Servicemen's Readjustment Act of 1944, the remaining provisions of which are compiled as 7 U.S.C., § 1001(b) and U.S.C., tit. 38, §§ 101, 109(b), 212, 214, 230, 613, 1510, 1553, 1554, 1801(a), 1802(a)-1802(d), 1802(f), 1803(a)-1803(d), 1810, 1812, 1813, 1816, 1817, 1822, 1825, 2001-2004, 3402, 5003, 5012(b) and 5013.

Compiler's Notes. — The words and figures in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1946 (1st E. S.), ch. 22 declared an emergency. Approved March 12, 1946.

65-510. Relation to other laws. — Any laws or parts of laws, which are inconsistent with the provisions of this chapter, or which would serve to defeat the purposes thereof, shall to such extent be deemed inapplicable to public employers and public employees in the exercise of the rights and privileges conferred by this chapter. [1951, ch. 175, § 6, p. 370; am. and redesign. 2006, ch. 51, § 13, p. 145.]

STATUTORY NOTES

Prior Laws. — Former § 65-510, which comprised 1951, ch. 175, § 1, p. 370; am. 1991, ch. 303, § 3, p. 797, was repealed by S.L. 2006, ch. 51, § 11.

Amendments. — The 2006 amendment, by ch. 51, redesignated the section from § 65-515.

Compiler's Notes. — Section 7 of S.L. 1951, ch. 175 provided: "If any provision of this act or the application of such provision to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby."

JUDICIAL DECISIONS

Rights and Privileges.

The reference to "rights and privileges conferred by this act" in this section refers to the rights and privileges conferred on those public employees called for military duty during

their employment, not to the rights and privileges conferred on war veterans by the Veterans' Preference Act. *James v. DOT*, 125 Idaho 892, 876 P.2d 590 (1994).

65-511. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter. [I.C., § 65-511, as added by 2006, ch. 51, § 15, p. 145.]

STATUTORY NOTES

Prior Laws. — Former § 65-511, which comprised 1951, ch. 175, § 2, p. 370; am. 1991, ch. 303, § 4, p. 797, was repealed by S.L. 2006, ch. 51, § 14.

65-512. Rights after reinstatement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 175, § 3, p. 370, was repealed by S.L. 2006, ch. 51, § 14.

65-513. Leave of absence for public employees who are not accepted for military duty. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 175, § 4, p. 370, was repealed by S.L. 2006, ch. 51, § 14.

65-514. Enforcement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 175, § 5, p. 370, was repealed by S.L. 2006, ch. 51, § 14.

65-515. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — Former § 65-515, which comprised 1951, ch. 175, § 6, p. 370, was amended and redesignated as § 65-510, pursuant to S.L. 2006, ch. 51, § 13.

CHAPTER 6

SERVICE OFFICERS FOR AID OF VETERANS

SECTION.

65-601. Service officer appointed to aid veterans or dependents.

SECTION.

65-602. Compensation and office of service officer.

65-601. Service officer appointed to aid veterans or dependents. — The board of county commissioners of any county in the state shall have power and authority and in its discretion may appoint a service officer whose duty it shall be to give aid and assistance to any veteran, widow, widower or dependent thereof in applying to the federal or state veterans' agencies for all benefits and aid to which the veteran, widow, widower or dependent thereof is entitled by federal, state or local laws, rules or regulations. Such appointment may, in the discretion of the board of county commissioners, be a separate office or additional duty imposed upon an existing county official, or[,] at the discretion of the board, such appointment may be made, and the expenses and salary thereof financed in conjunction with any service organization or organizations operating within the county. [1946 (1st E. S.), ch. 27, § 1, p. 32.]

STATUTORY NOTES

Compiler's Notes. — The bracketed comma was inserted by the compiler.

65-602. Compensation and office of service officer. — The board of county commissioners shall fix the compensation, or a county contribution to

the salary, of such service officer, provide him with an office and the necessary equipment therefor in the same manner as is provided for any other county officer under the provisions of chapter [section] 31-1001 [, Idaho Code], and shall make provision in the budget for the employment of such service officer and the expense for the proper maintenance of such office. Payments therefor shall be from the general tax fund of the county or out of other available funds not otherwise appropriated. [1946 (1st E. S.), ch. 27, § 2, p. 32.]

STATUTORY NOTES

Effective Dates. — Section 3 of S.L. 1946 (1st E. S.), ch. 27 declared an emergency. Approved March 18, 1946.

TITLE 66

STATE CHARITABLE INSTITUTIONS

CHAPTER.

1. STATE HOSPITALS, §§ 66-101 — 66-119.
2. INSANE ASYLUMS. [REPEALED.]
3. HOSPITALIZATION OF MENTALLY ILL, §§ 66-301 — 66-364.
4. TREATMENT AND CARE OF THE DEVELOPMENTALLY DISABLED, §§ 66-401 — 66-414.
5. STATE ASYLUM AND SANITARIUM FUND FOR PATIENTS, §§ 66-501 — 66-503.
6. DECLARATIONS FOR MENTAL HEALTH TREATMENT, §§ 66-601 — 66-613.
7. COMMITMENT TO IDAHO STATE SCHOOL AND COLONY. [REPEALED.]

CHAPTER.

8. STERILIZATION LAW. [REPEALED.]
9. IDAHO VETERANS' HOME, §§ 66-901 — 66-907.
10. IDAHO TUBERCULOSIS HOSPITAL, §§ 66-1001 — 66-1007.
11. FUNDS OF CHARITABLE INSTITUTIONS, §§ 66-1101 — 66-1108.
12. INTERSTATE COMPACT ON MENTAL HEALTH, §§ 66-1201 — 66-1205.
13. IDAHO SECURITY MEDICAL PROGRAM, §§ 66-1301 — 66-1318.

CHAPTER 1

STATE HOSPITALS

SECTION.

- 66-101. [Obsolete.]
- 66-102 — 66-111. [Repealed.]
- 66-112, 66-113. [Obsolete.]
- 66-114. Transfer of powers and duties of charitable institutions commission to board of health and welfare.
- 66-115. Officially naming the state hospitals.

SECTION.

- 66-116. Institutions under the jurisdiction of the board.
- 66-117. Transfer of property to board.
- 66-118. Powers and duties of the board — Hospitals managed by — Annual report.
- 66-119. Pecuniary interest in contracts forbidden.

66-101. Charitable institutions commission creation. [Obsolete.]

STATUTORY NOTES

Compiler's Notes. — This section, comprising S.L. 1946 (1st E.S.), ch. 26, § 1, p. 28, which created the charitable institutions commission, the name of which was changed to the state hospitals board by S.L. 1951, ch. 273, § 1, p. 574, was made obsolete by S.L. 1967, ch. 311, § 23, p. 870, which transferred

the powers, duties, property and personnel of the state hospitals board to the state board of health; the name of the state board of health was changed to the board of environmental protection and health by S.L. 1972, ch. 347, § 16, p. 1017. See § 66-114 and board of health and welfare.

66-102 — 66-111. Powers and procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1946 (1st E. S.), ch. 226, §§ 2 — 9A, p. 28; 1947, ch. 41, § 2, p. 46;

1947, ch. 57, §§ 1, 3, 4, p. 78; 1949, ch. 132, § 1, p. 235, were repealed by S.L. 1951, ch. 273, § 9, p. 574.

66-112, 66-113. Name change — Compensation of board members. [Obsolete.]

STATUTORY NOTES

Compiler's Notes. — These sections, comprising S.L. 1951, ch. 273, §§ 1, 2, p. 574,

which changed the name of the charitable institutions commission to the state hospitals

board and provided compensation for the board, were made obsolete by S.L. 1967, ch. 311, § 23, p. 870, which transferred the powers, duties, property and personnel of the state hospitals board to the state board of

health; the name of the state board of health was changed to the board of environmental protection and health by S.L. 1972, ch. 347, § 16, p. 1017. See § 66-114 and board of health and welfare.

66-114. Transfer of powers and duties of charitable institutions commission to board of health and welfare. — The board of health and welfare of the state of Idaho shall exercise all powers, duties and privileges conferred upon the charitable institutions commission by title 66, Idaho Code, except as herein repealed, and also all the powers, duties and privileges conferred upon the charitable institutions commission by title 67, Idaho Code. [1951, ch. 273, § 3, p. 574; am. 1981, ch. 114, § 6, p. 169.]

STATUTORY NOTES

Cross References. — Interstate compact on mental health, § 66-1201.

66-115. Officially naming the state hospitals. — The hospital located at Blackfoot, in the county of Bingham, shall be known as the State Hospital South; the hospital located at Orofino, in the county of Clearwater, shall be known as the State Hospital North; the hospital located at Nampa, in the county of Canyon, shall be known as the Idaho State School and Hospital. [1951, ch. 273, § 4, p. 574; am. 1965, ch. 33, § 1, p. 50.]

66-116. Institutions under the jurisdiction of the board. — State Hospital South, State Hospital North and Idaho State School and Hospital shall be under the management and control of the board of health and welfare. [1951, ch. 273, § 5, p. 574; am. 1965, ch. 32, § 1, p. 50; am. 1969, ch. 133, § 1, p. 416; am. 1981, ch. 114, § 7, p. 169.]

66-117. Transfer of property to board. — All funds, papers, records and files of the charitable institutions commission of the state of Idaho are hereby transferred to the board of health and welfare. [1951, ch. 273, § 6, p. 574; am. 1981, ch. 114, § 8, p. 169.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1981, ch. 114 read: "It is hereby declared by the legislature of the state of Idaho that its mentally disabled citizens are entitled to be diagnosed, cared for, and treated in as expedient a manner possible consistent with their legal rights, in a setting no more restrictive than their protection and the protection of society require, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at

liberty or be cared for privately except when necessary for the protection of themselves or society."

Compiler's Notes. — Section 42 of S.L. 1981, ch. 114 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

66-118. Powers and duties of the board — Hospitals managed by — Annual report. — The board shall have complete authority to manage

and operate the State Hospital North, at Orofino; the State Hospital South, at Blackfoot; the Idaho State School and Hospital at Nampa; with authority to establish professional standards of qualifications for doctors, nurses, superintendents, general managers, farm managers, attendants, and all other personnel and may employ a general business manager for each of said hospitals, and hospital personnel at said hospitals and medical superintendents for each of said hospitals, at its discretion, or a superintendent, or director, or manager who may be over all hospitals. The board shall have complete authority to, or it is the duty of the board: -

(a) To make rules for the government of said hospitals and to define the duties of all employees; provided, that the members of the board shall not be personally liable for any act of any employee done in violation of any law, or contrary to any rule of the board; nor shall any administrative employee of the board be responsible for the act of any other employee done in violation of any laws of the state, or rule of the board, or order of the administrative employee;

(b) To receive, take and hold property, both real and personal, in trust for the state and for the use and benefit of such hospitals;

(c) To visit each of said hospitals at such times as it deems necessary and to keep itself advised of all expenses and the condition of buildings and property, the safety and treatment of patients, and require the general manager or superintendent to make periodic reports as to the condition of each hospital and treatment of the patients;

(d) To require the keeping of a complete and accurate set of books of each hospital in accordance with the accounting required of other institutions of the state; to examine and audit the expenditures of each hospital and to certify the same to the state controller. The board shall require that all itemized bills, purchases and other expenditures made, must be examined and approved by the head of the hospital making such purchases or expenditures and then the same must be certified by the board, and transmitted to the state controller to be reviewed and allowed in the same manner as other accounts against the state are reviewed and allowed. When allowed the state controller must draw his warrant on the state treasurer for the amount so reviewed and allowed, and the state treasurer is hereby authorized and required to pay the same out of any money in the state treasury appropriated therefor;

(e) To make rules and fix the terms and conditions of payment of costs of care and treatment of mentally ill persons who are not indigent or who are not residents of the state, who are admitted to said State Hospital North, State Hospital South, or Idaho State School and Hospital, all receipts from such persons to be paid into the state treasury and credited to salaries and wages, other current expense, or capital outlay of the general fund of the remitting hospital, at the discretion of the board;

(f) To enter into reciprocal agreements with similar boards of other states for the transfer of residents of those states, who have been involuntarily hospitalized to any of the aforesaid hospitals in this state, or the transfer of Idaho residents, who have been involuntarily hospitalized to similar hospitals in those states, to the appropriate hospital in this state;

(g) To recognize that or to proceed on the fact that any order of involuntary hospitalization of an Idaho resident, by judicial action of another state, shall be sufficient for admitting such resident, without further judicial action in this state, to a similar hospital in this state;

(h) To remove patients in case of necessity, or when they feel it is for the betterment of the patient's welfare, to an appropriate place at the discretion of the board, and to make necessary negotiations to carry out such a procedure;

(i) To purchase insurance for any of the medical staff in any of the hospitals against liability for alleged malpractice by reason of any act, or omission, while in the service of the state of Idaho;

(j) To remove and transfer from one (1) state hospital to another, or from a state hospital to a private hospital, or to a hospital of another state, or other government agency, any person confined therein, for the purpose of grouping together classes of mentally ill persons, or to give them better medical aid and care;

(k) To report to the governor each year, a statement of receipts and expenditures, the condition of each hospital, the number of patients under treatment at each hospital during the preceding year and such other matters as may be pertinent, and to make an annual report to the governor in substantially the same manner on or before the 1st day of December prior to each regular session of the legislature;

(l) To delegate to the head of the hospital, or to a director or superintendent, or manager of all hospitals the powers and duties vested by law in the board, at its discretion;

(m) To initiate, create, or promote procedures, policies and practices either as a body or in cooperation with other governmental departments or agencies for the general welfare and betterment of the mental health of the people of the state of Idaho. [1951, ch. 273, § 7, p. 574; am. 1955, ch. 168, § 1, p. 338; am. 1976, ch. 9, § 8, p. 25; am. 1994, ch. 180, § 161, p. 420; am. 2003, ch. 32, § 34, p. 115.]

STATUTORY NOTES

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to

state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 161 of S.L. 1994, ch. 180 became effective January 2, 1995.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

Liability of Inmate.

The commissioner of public welfare is authorized to collect, if the inmate has sufficient funds or property, the "actual charges and

expenses" for the "care and safekeeping" of such patient. *State ex rel. Macey v. Johnson*, 50 Idaho 363, 296 P. 588 (1931).

66-119. Pecuniary interest in contracts forbidden. — No member of the board, or its employees, or any other employee of the state of Idaho may be pecuniarily interested in any contract for supplies furnished said hospitals. [1951, ch. 273, § 8, p. 574.]

STATUTORY NOTES

Cross References. — Prohibitions against contracts with public officers, §§ 59-201 — 59-207.

Compiler's Notes. — Section 10 of S.L. 1951, ch. 273 read: "If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature

hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional."

Effective Dates. — Section 11 of S.L. 1951, ch. 273 provided that the act should take effect from and after July 1, 1951.

CHAPTER 2

INSANE ASYLUMS

SECTION.

66-201 — 66-212. [Repealed.]

66-201 — 66-203. State hospitals, charitable institutions commission. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1931, ch. 98, §§ 1-3, p. 171; I.C.A., §§ 64-101 — 64-103, were re-

pealed by S.L. 1951, ch. 273, § 9, p. 574. For present law, see §§ 66-115, 66-116, and 66-118 herein.

66-204. Parole. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1931, ch. 98, § 4, p. 171;

I.C.A., § 64-104; 1947, ch. 57, § 2, p. 78, was repealed by S.L. 1949, ch. 132, § 2.

66-205 — 66-212. State hospitals — Procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1931, ch. 98, §§ 7, 8, 11-16, p. 171; I.C.A., §§ 64-107, 64-108, 64-

111 — 64-116, were repealed by S.L. 1951, ch. 273, § 9, p. 574. For present law, see §§ 66-118, 66-119, 66-334, 66-335, 66-337, 66-351.

CHAPTER 3

HOSPITALIZATION OF MENTALLY ILL

SECTION.

66-301 — 66-316. [Repealed.]

66-317. Definitions.

66-318. Authority to admit voluntary patients — Denial of admission.

66-319. Release of voluntary inpatients.

SECTION.

66-320. Right to release on application — Exceptions.

66-321. [Repealed.]

66-322. Appointment of guardian for individuals lacking capacity to make

SECTION.

informed decisions about treatment — Judicial procedure.

- 66-323. [Repealed.]
- 66-324. Authority to receive involuntary patients.
- 66-325. Residence not affected by place of treatment.
- 66-326. Detention without hearing.
- 66-327. Responsibility for costs of commitment and care of patients.
- 66-328. Jurisdiction of proceedings for commitment.
- 66-329. Commitment to department director upon court order — Judicial procedure.
- 66-329A. [Amended and Redesignated.]
- 66-330. Transportation — Temporary detention — Notice.
- 66-331. Care and treatment in a federal facility.
- 66-332. [Repealed.]
- 66-333. Examination of newly admitted patients.
- 66-334. Transfer of patients between certain inpatient treatment facilities.
- 66-335. Commitment of mentally ill convicts.
- 66-336. [Repealed.]
- 66-337. Review, termination of commitment and discharge of patients.
- 66-338. Conditional release.
- 66-339. Rehospitalization of patients conditionally released from inpa-

SECTION.

tient treatment facilities — Procedure.

- 66-339A. Outpatient commitment.
- 66-339B. Outpatient commitment hearing.
- 66-339C. Noncompliance with court order.
- 66-340. [Repealed.]
- 66-341. Exemptions from liability.
- 66-342. Change in disposition — Appeal.
- 66-343. Petition for reexamination of order of commitment.
- 66-344. Right to humane care and treatment.
- 66-345. Restraints and seclusion.
- 66-346. Right to communication and visitation — Exercise of civil rights.
- 66-347. Writ of habeas corpus.
- 66-348. Disclosure of information.
- 66-349. Penalty for violation.
- 66-350. Detention pending judicial determination.
- 66-351. Repayment of money on discharge of patient.
- 66-352. Money found on mentally ill persons — Disposition.
- 66-353. [Repealed.]
- 66-354. Mentally ill person with assets sufficient to pay expenses — Liability of relatives.
- 66-355. Appointment of guardian — Incompetency of mentally ill person requires separate proceedings — Liability for care and treatment costs.
- 66-356 — 66-364. [Repealed.]

66-301 — 66-316. Commitment to insane asylums — Procedures. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1881, p. 300; R.S., §§ 769-782; 1895, p. 17, §§ 1, 2; 1899, p. 114, §§ 1, 2; R.C., §§ 770-783a; 1913, ch. 56, § 1, p. 166; C.L., §§ 770-783a; C.S., §§ 1177-1191; 1921, ch. 140, § 1, p. 326; 1921, ch. 186, § 3,

p. 387; 1923, ch. 103, § 1, p. 129; 1929, ch. 153, § 1, p. 278; I.C.A., §§ 64-201 — 64-216; 1946 (1st E.S.), ch. 19, § 1, p. 22; 1947, ch. 56, §§ 1, 3, p. 74, were repealed by S.L. 1951, ch. 290, § 40, p. 622.

66-317. Definitions. — As used in this chapter, terms shall have the following meanings:

(1) "Department director" means the director of the state department of health and welfare.

(2) "Voluntary patient" means an individual admitted to a facility for evaluation pursuant to section 18-211 or 20-520, Idaho Code, or admitted to a facility for observation, diagnosis, evaluation, care or treatment pursuant to section 66-318, Idaho Code.

(3) "Involuntary patient" means an individual committed pursuant to section 18-212, 66-329 or 66-1201, Idaho Code, or committed pursuant to

section 16-1619 or 20-520, Idaho Code, and admitted to a facility for the treatment of minors.

(4) "Licensed physician" means an individual licensed under the laws of this state to practice medicine or a medical officer of the government of the United States while in this state in the performance of his official duties.

(5) "Designated examiner" means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67, Idaho Code, by the department of health and welfare. Any person designated by the department director will be specially qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.

(6) "Dispositioner" means a designated examiner employed by or under contract with the department of health and welfare and designated by the department director to determine the appropriate location for care and treatment of involuntary patients.

(7) "Facility" means any public or private hospital, sanatorium, institution, mental health center or other organization designated in accordance with rules adopted by the board of health and welfare as equipped to initially hold, evaluate, rehabilitate or to provide care or treatment, or both, for the mentally ill.

(8) "Lacks capacity to make informed decisions about treatment" means the inability, by reason of mental illness, to achieve a rudimentary understanding after conscientious efforts at explanation of the purpose, nature, and possible significant risks and benefits of treatment.

(9) "Inpatient treatment facility" means a facility in which an individual receives medical and mental treatment for not less than a continuous twenty-four (24) hour period.

(10) "Supervised residential facility" means a facility, other than the individual's home, in which the individual lives and in which there lives, or are otherwise on duty during the times that the individual's presence is expected, persons who are employed to supervise, direct, treat or monitor the individual.

(11) "Likely to injure himself or others" means either:

(a) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.

(12) "Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility.

(13) "Gravely disabled" means a person who, as the result of mental illness, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, or essential medical care, or shelter or safety.

(14) "Outpatient commitment" means a court order directing a person to comply with specified mental health treatment requirements, not involving the continuous supervision of a person in an inpatient setting, that are reasonably designed to alleviate or to reduce a person's illness or disability, or to maintain or prevent deterioration of the person's mental or emotional functioning. The specified requirements may include, but need not be limited to, taking prescribed medication, reporting to a facility to permit monitoring of the person's condition, or participating in individual or group therapy or in educational or vocational programs. Outpatient commitment may be up to one (1) year.

(15) "Protection and advocacy system" means the agency designated by the governor as the state protection and advocacy system pursuant to 42 U.S.C. section 15043 and 42 U.S.C. sections 10801 et seq. [1951, ch. 290, § 1, p. 622; am. 1959, ch. 207, § 1, p. 439; am. 1969, ch. 187, § 1, p. 552; am. 1972, ch. 44, § 1, p. 67; am. 1973, ch. 173, § 1, p. 363; am. 1974, ch. 165, § 5, p. 1405; am. 1981, ch. 114, § 9, p. 169; am. 1982, ch. 59, § 6, p. 91; am. 1986, ch. 84, § 1, p. 243; am. 1998, ch. 90, § 1, p. 315; am. 2001, ch. 107, § 21, p. 350; am. 2002, ch. 128, § 1, p. 357; am. 2003, ch. 249, § 2, p. 641; am. 2004, ch. 315, § 1, p. 885; am. 2005, ch. 391, § 59, p. 1263; am. 2006, ch. 214, § 2, p. 645.]

STATUTORY NOTES

Cross References. — Interstate compact on mental health, § 66-1201.

Amendments. — The 2006 amendment, by ch. 214, redesignated subsections throughout the section; and in subsection (2), inserted

"observation, diagnosis, evaluation, care or."

Effective Dates. — Section 9 of S.L. 1998, ch. 90 provided this act shall be in full force and effect on and after July 1, 1999.

JUDICIAL DECISIONS

Duty of Care to Voluntary Patients.

Rationally there is no difference in the duty of care as between those who have been involuntarily committed and those who have been voluntarily committed, and the statutes do not differentiate between the care that is required to be given to involuntarily committed children than those voluntarily committed: voluntarily committed children are still

subject to abuse, including sexual abuse by adult patients, and they have the same right to demand the care that is given to involuntarily committed children. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Cited in: *State v. Roach*, 112 Idaho 173, 730 P.2d 1093 (Ct. App. 1986); *Bradshaw v. State*, 120 Idaho 429, 816 P.2d 986 (1991).

RESEARCH REFERENCES

A.L.R. — Hospital's liability for injuries sustained by patient as a result of restraints imposed on movement. 25 A.L.R.3d 1450.

Liability of hospital for refusal to admit or treat patient. 35 A.L.R.3d 841.

Liability of one releasing institutionalized mental patient for harm he causes. 38 A.L.R.3d 699.

Liability of hospital for injury caused through assault by a patient. 48 A.L.R.3d 1288.

Malpractice in connection with electroshock treatment. 94 A.L.R.3d 317.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient. 99 A.L.R.3d 851.

Hospital's liability for negligence in failing to review or supervise treatment given by doctor, or to require consultation. 12 A.L.R.4th 57.

Immunity of state or governmental unit or

agency from liability for damages in tort in operating hospital. 25 A.L.R.2d 203; 18 A.L.R.4th 858.

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary. 21 A.L.R.4th 729.

Hospital's liability for patient's injury or death resulting from escape or attempted escape. 37 A.L.R.4th 200.

66-318. Authority to admit voluntary patients — Denial of admission. — (1) The director of any facility may admit as a voluntary patient the following persons for observation, diagnosis, evaluation, care or treatment of mental illness:

- (a) Any person who is eighteen (18) years of age or older;
- (b) Any individual fourteen (14) to eighteen (18) years of age who may apply to be admitted for observation, diagnosis, evaluation, care or treatment and the facility director will notify the parent, parents or guardian of the individual of the admission; a parent or guardian may apply for the individual's release and the facility director will release the patient within three (3) days, excluding Saturdays, Sundays and legal holidays, of the application for discharge, unless the time period for diagnosis, evaluation, care or treatment is extended pursuant to section 66-320, Idaho Code;
- (c) Any emancipated minor;
- (d) Any individual under fourteen (14) years of age upon application of the individual's parent or guardian, provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner;
- (e) Any individual who lacks capacity to make informed decisions about treatment upon application of the individual's guardian; provided that admission to an inpatient facility shall require a recommendation for admission by a designated examiner; or
- (f) Any individual confined for examination pursuant to section 18-211 or 20-520, Idaho Code.

(2) The director of any facility must refuse admission to any applicant under this section whenever:

- (a) The applicant is determined not to be in need of observation, diagnosis, evaluation, care or treatment at the facility;
- (b) The applicant is determined to lack capacity to make informed decisions about treatment unless the application is made by a guardian with authority to consent to treatment; or
- (c) The applicant's welfare or the welfare of society, or both, are better protected by the provisions of section 66-329, Idaho Code. [1951, ch. 290, § 2, p. 622; am. 1959, ch. 207, § 2, p. 439; am. 1972, ch. 44, § 2, p. 67; am. 1973, ch. 173, § 2, p. 363; am. 1981, ch. 114, § 10, p. 169; am. 2004, ch. 23, § 9, p. 25; am. 2006, ch. 214, § 3, p. 645.]

STATUTORY NOTES

Amendments. — The 2006 amendment, by ch. 214, redesignated subsections throughout the section; in subsection (1), added “the following persons for observation, diagnosis,

evaluation, care or treatment of mental illness”; in subsection (1)(b), substituted “evaluation, care or treatment” for “evaluation and treatment” near the beginning; in subsection

(2)(a), substituted "determined not to be in need" for "is not in need"; and in subsection

(2)(b), substituted "is determined to lack capacity" for "lacks capacity."

JUDICIAL DECISIONS

ANALYSIS

Authority to admit.

Duty of care.

Requirements for commitment.

Authority to Admit.

The Mental Health Act provides the sole authority to admit any juvenile to the department of health and welfare's (department) state hospital and mental health system, regardless of how they were originally committed to the department's care and custody. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Duty of Care.

Rationally there is no difference in the duty of care as between those who have been involuntarily committed and those who have been voluntarily committed, and the statutes do not differentiate between the care that is required to be given to involuntarily committed children than those voluntarily committed: voluntarily committed children are still subject to abuse, including sexual abuse by

adult patients, and they have the same right to demand the care that is given to involuntarily committed children. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Requirements for Commitment.

A voluntary and an involuntary commitment under the Mental Health Act requires that the minor admitted first be evaluated and diagnosed and second be found to be suffering from mental or emotional illness before he or she can be brought under the care and custody of the department of health and welfare for treatment. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Cited in: *Parham v. J.R.*, 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979).

RESEARCH REFERENCES

A.L.R. — Mental competency of patient to consent to surgical operation or medical treatment. 25 A.L.R.3d 1439.

Liability of hospital for refusal to admit or treat patient. 35 A.L.R.3d 841.

66-319. Release of voluntary inpatients. — The director of an inpatient facility shall release any person, admitted in accordance with the procedure outlined in section 66-318, Idaho Code, whose continued care or treatment is no longer appropriate. If upon evaluation at the facility, it is determined that the patient is mentally ill and is likely to injure himself or others or is gravely disabled, the director of the facility shall institute appropriate judicial proceedings for continued care and treatment. In the case of persons confined pursuant to section 20-520 or 18-211, Idaho Code, upon completion of the examination, the sheriff of the county from which the defendant was committed shall be notified and the defendant shall continue to be confined at the facility for transportation back to the county. In those cases of persons admitted upon the application of a guardian, those persons shall be released upon the termination of the guardian's authority to consent to treatment. [1951, ch. 290, § 3, p. 622; am. 1959, ch. 207, § 3, p. 439; am. 1973, ch. 173, § 3, p. 363; am. 1981, ch. 114, § 11, p. 169; am. 2004, ch. 23, § 10, p. 25.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

66-320. Right to release on application — Exceptions. — (a) A voluntary patient admitted in accordance with the procedure outlined in section 66-318, Idaho Code, who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse, or adult next of kin shall be released except that:

(1) if the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto, and

(2) if the patient, by reason of his age, was admitted on the application of another person, his release prior to becoming sixteen (16) years of age may be conditioned upon the consent of his parent or guardian, or

(3) if the director of the facility determines that the patient should be hospitalized under the provisions of this chapter, the patient may be detained up to three (3) days, excluding Saturdays, Sundays and legal holidays, for the purpose of examination by a designated examiner and the filing of an application for continued care and treatment.

(b) Notwithstanding any other provision of this chapter, judicial proceedings authorized by this chapter shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

(c) The date and time of any request for release under this section shall be entered in the patient's clinical record. If the request for release is denied, the reasons for denial also shall be entered in the patient's clinical record.

(d) A patient admitted for examination pursuant to section 20-520 or 18-211, Idaho Code, may not be released except for purposes of transportation back to the court ordering, or party authorizing, the examination. [1951, ch. 290, § 4, p. 622; am. 1973, ch. 173, § 4, p. 363; am. 1981, ch. 114, § 12, p. 169; am. 1986, ch. 84, § 2, p. 243; am. 2004, ch. 23, § 11, p. 25.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

JUDICIAL DECISIONS

Cited in: Parham v. J.R., 442 U.S. 584, 99 S. Ct. 2493, 61 L. Ed. 2d 101 (1979).

RESEARCH REFERENCES

A.L.R. — Liability of one releasing institutionalized mental patient for harm he causes. 38 A.L.R.3d 699.

66-321. Admission without judicial order. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1951, ch. 290, § 5, p. 622, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

66-322. Appointment of guardian for individuals lacking capacity to make informed decisions about treatment — Judicial procedure. — (a) Proceedings for the appointment of a guardian of a mentally ill person may be commenced by the filing of a written petition with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, by a licensed physician, licensed clinical psychologist, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or by the director of any facility in which such patient may be.

(b) The petition shall state the name and last known address of the proposed patient; the name and address of either the spouse, next of kin or friend of the proposed patient; whether a guardian of the proposed patient has been previously appointed under the laws of this or any other state and, if so, the name and address of the guardian and the circumstances of such appointment; and a precise statement showing that the proposed patient is mentally ill, that treatment is available for such illness, and that the proposed patient lacks capacity to make informed decisions about treatment.

(c) Any such petition shall be accompanied by a certificate of a licensed physician or licensed clinical psychologist stating that the physician or psychologist has personally examined the proposed patient within the last fourteen (14) days and is of the opinion: (i) that the proposed patient is mentally ill, (ii) that in the absence of treatment the immediate prognosis is for major distress of the proposed patient which will result in serious mental or physical deterioration of the proposed patient, (iii) that treatment is available which is likely to avoid serious mental or physical deterioration of the proposed patient, and (iv) that the proposed patient lacks capacity to make informed decisions about treatment; or by a written statement by the physician or psychologist that the proposed patient has refused to submit to an examination.

(d) Upon receipt of a petition, the court shall within forty-eight (48) hours appoint another licensed physician or licensed clinical psychologist to make a personal examination of the proposed patient, or if the proposed patient has not been examined, the court shall appoint two (2) licensed physicians or licensed clinical psychologists to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. Within seventy-two (72) hours, the physician or psychologist shall file with the court certificates described in subparagraph (c) above, if necessary.

(e) Upon receipt of such petition and certificates, the court shall appoint a time and place for hearing not more than seven (7) days from receipt of such certificates and thereupon give written notice to the proposed patient. The notice shall include a copy of the petition and certificates and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney. Notice of the time and place of the hearing shall also be given to the petitioner.

(f) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide

counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code.

(g) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health.

(h) The proposed patient and the petitioner shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. At the hearing, any existing provision of law prohibiting the disclosure of confidential communications between the examining physician or psychologist and the proposed patient shall not apply and the physicians or psychologists who examined the proposed patient shall be competent witnesses to testify as to the proposed patient's condition. The proposed patient shall be required to be present at the hearing, and be free from drugs likely to impair the proposed patient's ability to communicate with counsel or understand the proceedings, unless the right to be present or free from drugs is knowingly and voluntarily waived by the patient or unless the presence of the patient at the hearing would unduly disrupt the judicial proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and the rules of evidence.

(i) The court shall appoint a person other than the treating professional to act in the proposed patient's best interest with authority to consent to treatment, if, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that:

- (1) The proposed patient has a severe and reliably diagnosable mental illness;
- (2) Without treatment, the immediate prognosis is for major distress resulting in serious mental or physical deterioration of the proposed patient;
- (3) Treatment is available for such illness;
- (4) The proposed patient lacks capacity to make informed decisions about treatment; and
- (5) The relative risks and benefits of treatment or nontreatment are such that a reasonable person would consent to treatment.

The court shall consider appointing persons to give consent in the following priority: the proposed patient's spouse, next of kin, friend or if the proposed patient's spouse, next of kin or friend are unable or unwilling, another appropriate person not associated with the facility where the person is being, or shall be treated.

(j) The appointed person shall have authority to consent to treatment, including treatment at a facility. Upon approval of the court, the appointed person may pay the costs of treatment from the patient's money and tangible property deliverable to or received by the patient during the period of the appointed person's authority, and may apply for any benefits to which the patient is entitled. In the exercise of his powers, the appointed person is to act as a fiduciary and shall observe the standards of care applicable to trustees as described by section 15-7-302, Idaho Code. The appointment shall continue for a period of seven (7) weeks or until the court determines

that the patient no longer lacks capacity to make informed decisions about treatment, whichever is shorter.

(k) Upon petition of the appointed person, authority to consent may be continued for an additional seven (7) week period, if the court again enters the findings required by subparagraph (i) above. The petition for continued authority shall be accompanied by the certificate of the treating professional meeting the requirements of subparagraph (c) above. The petition for continued authority and physician's certificate shall be served upon the patient and the patient's attorney. If the proposed patient objects to the continued authority, the court shall conduct a hearing, following notice of the time and place of such hearing to the petitioner, the proposed patient and the proposed patient's attorney.

(l) Proceedings for appointment of a person with authority to consent under this section may be consolidated with proceedings for the involuntary care of the proposed patient under section 66-329, Idaho Code, provided, however, that appointment of a person with authority to consent under this section shall terminate the proceedings for the involuntary care under section 66-329, Idaho Code.

(m) No more than two (2) petitions with authority to consent shall be granted under subsection (i) of this section within any twelve (12) month period, provided that other proceedings under this chapter or the Uniform Probate Code shall be permitted.

(n) The person with authority to consent appointed pursuant to this section shall not be personally responsible for the cost of care or treatment rendered the mentally ill individual, simply by reason of the authority granted by this section. [I.C., § 66-322, as added by 1981, ch. 114, § 13, p. 169.]

STATUTORY NOTES

Prior Laws. — Former § 66-322, which comprised S.L. 1951, ch. 290, § 6, p. 622; am. 1959, ch. 207, § 4, p. 439; am. 1973, ch. 173, § 5, p. 363; am. 1974, ch. 165, § 6, p. 1405,

was repealed by S.L. 1981, ch. 114, § 2.

Compiler's Notes. — The Uniform Probate Code, referred to in subsection (m), is compiled as § 15-1-101 et seq.

66-323. Release — Notice. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1951, ch. 290, § 7, p. 622, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

66-324. Authority to receive involuntary patients. — The director of any facility is authorized to receive therein for observation, diagnosis, evaluation, care or treatment any individual:

(1) Committed to the department director pursuant to sections 16-1619, 20-520, 18-212, 18-214 or 66-329, Idaho Code;

(2) Transferred pursuant to section 66-1201, Idaho Code; or

(3) Detained or transferred pursuant to section 66-326, Idaho Code. [1951, ch. 290, § 9, p. 622; am. 1959, ch. 207, § 6, p. 439; am. 1973, ch. 173, § 7, p. 363; am. and redesign. 1981, ch. 114, § 14, p. 169; am. 1986, ch. 84, § 3, p. 243; am. 2001, ch. 107, § 22, p. 350; am. 2005, ch. 391, § 60, p. 1263; am. 2006, ch. 214, § 4, p. 645.]

STATUTORY NOTES

Prior Laws. — Former § 66-324, which comprised S.L. 1951, ch. 290, § 8, p. 622; am. 1959, ch. 207, § 5, p. 439; am. 1973, ch. 173, § 6, p. 363, was repealed by S.L. 1981, ch. 114, § 2.

Amendments. — The 2006 amendment, by ch. 214, in the introductory paragraph, substituted “evaluation, care or treatment” for “care and treatment”; and added the subsection (1) and (2) designations, and added subsection (3).

Compiler’s Notes. — This section which was formerly compiled as § 66-325 was transferred by amendment of S.L. 1981, ch. 114, § 14 to become § 66-324.

Section 18-214, referred to in subsection (1), was repealed by S.L. 1982, ch. 368, § 1.

Effective Dates. — Section 6 of S.L. 1986, ch. 84 declared an emergency. Approved March 22, 1986.

JUDICIAL DECISIONS

ANALYSIS

Care for voluntary and involuntary patients.
Commitment requirements.
Requirements for commitment.

Care for Voluntary and Involuntary Patients.

Rationally there is no difference in the duty of care between voluntarily and involuntarily committed minors. The statutes do not differentiate between the care that is required to be given to involuntarily committed children than those voluntarily committed. Voluntarily committed children are still subject to abuse, including sexual abuse by adult patients, and they have the same right under the Idaho Code to demand the care that is given to involuntarily committed children. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Commitment Requirements.

A voluntary and an involuntary commitment under the Mental Health Act requires

that the minor admitted first be evaluated and diagnosed and second be found to be suffering from mental or emotional illness before he or she can be brought under the care and custody of the department for treatment. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Requirements for Commitment.

A voluntary and an involuntary commitment under the Mental Health Act requires that the minor admitted first be evaluated and diagnosed and second be found to be suffering from mental or emotional illness before he or she can be brought under the care and custody of the department of health and welfare for treatment. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

66-325. Residence not affected by place of treatment. — For purposes of this chapter, the terms “residence,” “residing,” or “resides” shall refer to the place where the mentally ill person lives. None of the time spent in any facility shall be regarded as contributing toward, or acquiring, residence for any purpose. [I.C., § 66-325, as added by 1981, ch. 114, § 15, p. 169.]

STATUTORY NOTES

Compiler’s Notes. — Former § 66-325 is now compiled as § 66-324.

JUDICIAL DECISIONS

Class Action Suit.

In a class action suit on behalf of indigent children with emotional and mental handicaps, resident juveniles sent to out-of-state

facilities did not lose their residency, and therefore, were covered in a stipulation for class certification. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

66-326. Detention without hearing. — (1) No person shall be taken into custody or detained as an alleged emergency patient for observation, diagnosis, evaluation, care or treatment of mental illness unless and until the court has ordered such apprehension and custody under the provisions outlined in section 66-329, Idaho Code; provided, however, that a person may be taken into custody by a peace officer and placed in a facility, or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care, if the peace officer or a physician medical staff member of such hospital has reason to believe that the person is gravely disabled due to mental illness or the person's continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm; provided, under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses. For purposes of this section, the term "peace officer" shall include state probation and parole officers exercising their authority to supervise probationers and parolees. Whenever a person is taken into custody or detained under this section without court order, the evidence supporting the claim of grave disability due to mental illness or imminent danger must be presented to a duly authorized court within twenty-four (24) hours from the time the individual was placed in custody or detained.

(2) If the court finds the individual to be gravely disabled due to mental illness or imminently dangerous under subsection (1) of this section, the court shall issue a temporary custody order requiring the person to be held in a facility, and requiring an examination of the person by a designated examiner within twenty-four (24) hours of the entry of the order of the court. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(3) Where an examination is required under subsection (2) of this section, the designated examiner shall make his findings and report to the court within twenty-four (24) hours of the examination.

(4) If the designated examiner finds, in his examination under this section, that the person is mentally ill, and either is likely to injure himself or others or is gravely disabled due to mental illness, the prosecuting attorney shall file, within twenty-four (24) hours of the examination of the person, a petition with the court requesting the patient's detention pending commitment proceedings pursuant to the provisions of section 66-329, Idaho Code. Upon the receipt of such a petition, the court shall order his detention to await hearing which shall be within five (5) days (including Saturdays, Sundays and legal holidays) of the detention order. If no petition is filed within twenty-four (24) hours of the designated examiner's examination of the person, the person shall be released from the facility.

(5) Any person held in custody under the provisions of this section shall have the same protection and rights which are guaranteed to a person already committed to the department director. Upon taking a person into custody, notice shall be given to the person's immediate relatives of the person's physical whereabouts and the reasons for detaining or taking the person into custody.

(6) Nothing in this section shall preclude a hospital from transferring a person who has been detained under this section to another facility that is willing to accept the transferred individual for purposes of observation, diagnosis, evaluation, care or treatment. [I.C., § 66-329A, as added by 1976, ch. 365, § 1, p. 1200; am. and redesign. 1981, ch. 114, § 19, p. 169; am. 1991, ch. 210, § 1, p. 494; am. 1998, ch. 341, § 1, p. 1089; am. 2006, ch. 91, § 1, p. 265; am. 2006, ch. 214, § 5, p. 645.]

STATUTORY NOTES

Prior Laws. — Former § 66-326, which comprised S.L. 1951, ch. 290, § 10, p. 622, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

Amendments. — This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 91, inserted "For purposes of this section, the term 'peace officer' shall include state probation and parole officers exercising their authority to supervise probationers and parolees" as the second sentence of subsection (a).

The 2006 amendment, by ch. 214, redesignated subsections throughout the section; in subsection (1), inserted "or detained" following "custody" three times, "for observation,

diagnosis, evaluation, care or treatment of mental illness" near the beginning, and "or the person may be detained at a hospital at which the person presented or was brought to receive medical or mental health care" and "or a physician medical staff member of such hospital" near the middle; in subsection (4), added "from the facility" to the end; in subsection (5), inserted "detaining or" near the end; and added subsection (6).

Compiler's Notes. — This section which was formerly compiled as § 66-329A was transferred by amendment of S.L. 1981, ch. 114, § 19 to become § 66-326.

The words enclosed in parentheses so appeared in the law as enacted.

JUDICIAL DECISIONS

ANALYSIS

Duty of care.

Requirements for commitment.

Duty of Care.

Rationally there is no difference in the duty of care between voluntarily and involuntarily committed minors. The statutes do not differentiate between the care that is required to be given to involuntarily committed children than those voluntarily committed. Voluntarily committed children are still subject to abuse, including sexual abuse by adult patients, and they have the same right under the Idaho Code to demand the care that is given to involuntarily committed children.

Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1989).

Requirements for Commitment.

A voluntary and an involuntary commitment under the Mental Health Act requires that the minor admitted first be evaluated and diagnosed and second be found to be suffering from mental or emotional illness before he or she can be brought under the care and custody of the department for treatment. Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1989).

66-327. Responsibility for costs of commitment and care of patients. — (a) All costs associated with the commitment proceedings, including usual and customary fees of designated examiners, transportation costs and all medical, psychiatric and hospital costs not included in

subsection (b) of this section, shall be the responsibility of the person subject to judicial proceedings authorized by this chapter or such person's spouse, adult children, or, if indigent, the county of such person's residence after all personal, family and third party resources, including medical assistance provided under the state plan for medicaid as authorized by title XIX of the social security act, as amended, are considered. In proceedings authorized by this chapter, the court shall consider the indigency of persons subject to proceedings authorized by this chapter, in light of such person's income and resources, and if such person is able to pay all or part of such costs, the court shall order such person to pay all or any part of such costs. If the court determines such person is unable to pay all or any part of such costs, the court shall fix responsibility, in accordance with the provisions of chapter 35, title 31, Idaho Code, for payment of such costs on the county of such person's residence to the extent not paid by such person or not covered by third party resources, including medical assistance as aforesaid.

(b) The department of health and welfare shall assume responsibility for usual and customary treatment costs after the involuntary patient is dispositioned to the custody of the state of Idaho, beginning on the day after the director receives notice that a person has been committed into the custody of the department, until the involuntary patient is discharged and after all personal, family and third party resources are considered in accordance with section 66-354, Idaho Code. The counties shall be responsible for mental health costs if the individual is not transported within twenty-four (24) hours of receiving written notice of admission availability to a state facility. For purposes of this section, "usual and customary treatment costs" shall include routine board, room and support services rendered at a facility of the department of health and welfare; routine physical, medical, psychological and psychiatric examination and testing; group and individual therapy, psychiatric treatment, medication and medical care which can be provided at a facility of the department of health and welfare. The term "usual and customary treatment costs" shall not include neurological evaluation, CAT scan, surgery, medical treatment, any other item or service not provided at a facility of the department of health and welfare, or witness fees and expenses for court appearances. For the purposes of this section, the notice to the department may be faxed or mailed. [I.C., § 66-327, as added by 1981, ch. 114, § 16, p. 169; am. 2000, ch. 161, § 1, p. 409.]

STATUTORY NOTES

Prior Laws. — Former § 66-327, which comprised S.L. 1951, ch. 290, § 11, p. 622, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

Federal References. — Title XIX of the Social Security Act, referred to in subsection (a) of this section, is compiled as 42 U.S.C. §§ 1396 to 1396k.

JUDICIAL DECISIONS

Equal Protection.

Since the differences between the release procedures under this section and §§ 66-337

and 66-343 regarding persons involuntarily committed under § 66-329, and the procedures under former statute requiring auto-

matic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered the public safety than may be

appropriate for persons committed under § 66-329, defendants committed under the automatic commitment statute were not denied equal protection of the law. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

66-328. Jurisdiction of proceedings for commitment. — Proceedings for the care of mentally ill persons shall be had in the district court of the county where the person to be treated resides; except that such proceedings may be had in the district court of any other county of this state where such person is found upon the payment to such nonresident county by such residence county of such additional filing and hearing costs, and such reasonable medical and attorney fees or other fees as may be fixed by law or by the court where the proceedings are proposed to be had. [I.C., § 66-328, as added by 1961, ch. 165, § 1, p. 255; am. 1973, ch. 173, § 8, p. 363; am. 1974, ch. 165, § 7, p. 1405; am. 1981, ch. 114, § 17, p. 169.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

Prior Laws. — Former § 66-328, which comprised S.L. 1951, ch. 290, § 12, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

JUDICIAL DECISIONS

DECISIONS UNDER PRIOR LAW

District Courts' Jurisdiction.

The district courts have jurisdiction of proceedings for the commitment of the insane, addicts to the intemperate use of narcotics, or

those subject to inebriety, and such proceedings are not a guardianship proceeding but an exercise of police power of the state. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

66-329. Commitment to department director upon court order — Judicial procedure. — (a) Proceedings for the involuntary care and treatment of mentally ill persons by the department of health and welfare may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, or by a licensed physician, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, or the director of any facility in which such patient may be.

(b) The application shall state the name and last known address of the proposed patient; the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; whether the proposed patient can be cared for privately in the event commitment is not ordered; if the proposed patient is, at the time of the application, a voluntary patient; whether the proposed patient has applied for release pursuant to section 66-320, Idaho Code; and a simple and precise statement of the facts showing that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness.

(c) Any such application shall be accompanied by a certificate of a designated examiner stating that he has personally examined the proposed

patient within the last fourteen (14) days and is of the opinion that the proposed patient is: (i) mentally ill; (ii) likely to injure himself or others or is gravely disabled due to mental illness; and (iii) lacks capacity to make informed decisions about treatment, or a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner.

(d) Upon receipt of an application for commitment, the court shall, within forty-eight (48) hours appoint another designated examiner to make a personal examination of the proposed patient or if the proposed patient has not been examined, the court shall appoint two (2) designated examiners to make individual personal examinations of the proposed patient and may order the proposed patient to submit to an immediate examination. If neither designated examiner is a physician, the court shall order a physical examination of the proposed patient. At least one (1) designated examiner shall be a psychiatrist, licensed physician or licensed psychologist. The designated examiners shall report to the court their findings within the following seventy-two (72) hours as to the mental condition of the proposed patient and his need for custody, care, or treatment by a facility. The reports shall be in the form of written certificates which shall be filed with the court. The court may terminate the proceedings and dismiss the application without taking any further action in the event the reports of the designated examiners are to the effect that the proposed patient is not mentally ill or, although mentally ill, is not likely to injure himself or others or is not gravely disabled due to mental illness. If the proceedings are terminated, the proposed patient shall be released immediately.

(e) If the designated examiner's certificate states a belief that the proposed patient is mentally ill and either likely to injure himself or others or is gravely disabled due to mental illness, the judge of such court shall issue an order authorizing any health officer, peace officer, or director of a facility to take the proposed patient to a facility in the community in which the proposed patient is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section 66-346(a)(4), Idaho Code. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(f) Upon receipt of such application and designated examiners' reports the court shall appoint a time and place for hearing not more than seven (7) days from the receipt of such designated examiners' reports and thereupon give written notice of such time and place of such hearing together with a copy of the application, designated examiner's certificates, and notice of the proposed patient's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the proposed patient, to the proposed patient's spouse, guardian, next of kin or friend. With the consent of the proposed patient and his attorney, the hearing may be held immediately. Upon motion of the proposed patient and attorney and for good cause shown, the court may continue the hearing up to an additional fourteen (14) days during which time, for good cause shown, the court may authorize treatment.

(g) An opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the application is received by the court.

(h) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient, unless the patient waives the right to have venue fixed there.

(i) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

(j) The proposed patient, the applicant, and any other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure. The court shall receive all relevant and material evidence consistent with the rules of evidence.

(k) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the proposed patient:

(1) is mentally ill; and

(2) is, because of such condition, likely to injure himself or others, or is gravely disabled*due to mental illness;

the court shall order the proposed patient committed to the custody of the department director for an indeterminate period of time not to exceed one (1) year. The department director, through his dispositioner, shall determine within twenty-four (24) hours the least restrictive available facility consistent with the needs of each patient committed under this section for observation, care, and treatment.

(l) Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary admission to a hospital or other facility of an individual who:

(1) has epilepsy, a developmental disability, a physical disability, mental retardation, is impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill;

(2) is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority; or

(3) can be properly cared for privately with the help of willing and able family or friends, and provided, that such person may be detained or involuntarily admitted if such person is mentally ill and presents a substantial risk of injury to himself or others if allowed to remain at liberty.

(m) The order of commitment shall state whether the proposed patient lacks capacity to make informed decisions about treatment, the name and address of the patient's attorney and either the patient's spouse, guardian, adult next of kin, or friend.

(n) If the patient has no spouse or guardian and if the patient has property which may not be cared for pursuant to chapter 5, title 66, Idaho Code, or by the patient while confined at a facility, the court shall appoint a guardian ad litem for the purpose of preserving the patient's estate, pending further guardianship or conservatorship proceedings.

(o) The commitment shall continue until the commitment is terminated and shall be unaffected by the patient's conditional release or change in disposition. [1951, ch. 290, § 13, p. 622; am. 1953, ch. 264, § 1, p. 455; am. 1959, ch. 207, § 7, p. 439; am. 1969, ch. 143, § 1, p. 461; am. 1972, ch. 44, § 3, p. 67; am. 1973, ch. 173, § 9, p. 363; am. 1974, ch. 165, § 8, p. 1405; am. 1981, ch. 114, § 18, p. 169; am. 1991, ch. 210, § 2, p. 494; am. 1998, ch. 78, § 1, p. 279; am. 1998, ch. 341, § 2, p. 1089; am. 2003, ch. 249, § 3, p. 641.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

Amendments. — This section was amended by two 1998 acts — ch. 78, § 1 and ch. 341, § 2, both effective July 1, 1998, which do not conflict and have been compiled together.

The 1998 amendment, by ch. 78, § 1, in subdivision (d), substituted "master's" for "masters" in three instances, in the undesignated paragraph immediately following subdivision (k)(2), substituted "not to exceed one (1) year" for "not to exceed three (3) years," and in subdivision (l), deleted "or

regulation" following "chapter or in any rule."

The 1998 amendment, by ch. 341, § 2, in subdivisions (b) through (e), inserted "due to mental illness" following "is gravely disabled," in subdivision (d), substituted "master's" for "masters" in three instances, in the undesignated paragraph immediately following subdivision (k)(2), substituted "not to exceed one (1) year" for "not to exceed three (3) years," and at the beginning of subdivision (l)(1), substituted "has epilepsy, a developmental disability, a physical disability, mental retardation is" for "is epileptic, mentally deficient, mentally retarded."

JUDICIAL DECISIONS

ANALYSIS

Administrative review.

Applicable to jail inmates and pretrial detainees.

Commitment requirements.

Constitutionality.

Construction.

Director's options upon commitment.

Duty of care.

Equal protection.

Evidence.

—Designated examiners' certificates.

—Patient's capacity.

Final judgment.

Function of court.

Jurisdiction.
Magistrate's authority.
Nature of commitment procedure.
Validity of confinement.

Administrative Review.

Since a patient committed to the board of health pursuant to this section has access to the courts by way of the writ of habeas corpus, the lack of explicit provision in this section for administrative review is not fatal. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Applicable to Jail Inmates and Pretrial Detainees.

State's contention that this section did not apply to persons already legally held in custody in county jail as convicted inmates or prejudgment detainees was without merit as no language in the statutes made this section inapplicable to jail inmates or pretrial detainees, but under Title 66, Chapter 3, individuals in the custody of the Idaho board of correction were exempted. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

Commitment Requirements.

A voluntary and an involuntary commitment under the Mental Health Act requires that the minor admitted first be evaluated and diagnosed and second be found to be suffering from mental or emotional illness before he or she can be brought under the care and custody of the department for treatment. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Constitutionality.

Under this section, there is no lack of due process in the judicial phase of the proceedings; the patient is afforded right to counsel, right to be present, the right to present evidence and examine witnesses, with right to appeal from the determination by the court. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Construction.

The disposition mentioned in this section refers to location of the hospital where the patient is to be sent for treatment, and also refers to possible assignment to outpatient treatment centers and facilities and programs administered by the board of health. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971) (decision prior to 1973 amendment).

Director's Options Upon Commitment.

If the court ultimately orders involuntary commitment of the proposed patient to the custody of the director of the department of health and welfare, the escape risk is one of the factors to be considered by the director in determining the facility in which the patient will be placed. Options available to the director include the Idaho security medical facility

operated by the state board of correction under § 66-1304 provided the patient meets the criteria of § 66-1305. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

Duty of Care.

Rationally there is no difference in the duty of care between voluntarily and involuntarily committed minors. The statutes do not differentiate between the care that is required to be given to involuntarily committed children than those voluntarily committed. Voluntarily committed children are still subject to abuse, including sexual abuse by adult patients, and they have the same right under the Idaho Code to demand the care that is given to involuntarily committed children. *Jeff D. v. Andrus*, 899 F.2d 753 (9th Cir. 1989).

Equal Protection.

An accused who successfully asserted the defense of mental disease or defect and was automatically committed to mental institution was not denied his right to a hearing and judicial determination on the question of his mental condition in that those rights were accorded him at the time his defense of mental disease or defect was tendered and accepted. The fact that two separate statutes governed the recognition of those rights, i.e., former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect and this section governing involuntary civil commitments did not deny equal protection, but rather simply reflected differing factual settings under which those rights were equally recognized. *Penny v. State*, Dep't of Health & Welfare, 103 Idaho 689, 652 P.2d 193 (1982).

Since the differences between the release procedures under §§ 66-327, 66-337 and 66-343 regarding persons involuntarily committed under this section, and the procedures under former statute requiring automatic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered the public safety than may be appropriate for persons committed under this section, defendants committed under the automatic commitment statute were not denied equal protection of the law. *Penny v. State*, Dep't of Health & Welfare, 103 Idaho 689, 652 P.2d 193 (1982).

Evidence.

—Designated Examiners' Certificates.

While the designated examiners' certificates filed with the clerk of the court and

contained in the file physically before the presiding magistrate are part of the record, they may not be relied upon by the magistrate in making its evidentiary decision to commit or involuntarily medicate a patient unless the certificates are actually admitted into evidence. *Bradshaw v. State*, 120 Idaho 429, 816 P.2d 986 (1991).

—Patient's Capacity.

Subsection (m) requires that a finding that the patient's capacity to make informed decisions about treatment be supported by clear and convincing evidence. *Bradshaw v. State*, 120 Idaho 429, 816 P.2d 986 (1991).

Final Judgment.

A finding of the probate court that plaintiff was mentally ill, accompanied by an order that she be committed, without mention of duration, to the state board of health and remanded to the custody of a designee of such board (the director of the state hospital), was a final judgment and appealable; such order vested authority and control in the board of health. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Function of Court.

It is the function of the trial court to initially determine whether the proposed patient is in need of treatment, and if that determination is made, then the patient is committed to the state board of health (for an indeterminate period or a six-month temporary observational period). After the commitment to the state board of health is made, it must then accept the patient for observation, care, treatment and evaluation and once the court has made the determination that the patient needs treatment, its role is accomplished, and the patient becomes the responsibility of the state board of health. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Jurisdiction.

The decision of the board of health pursuant to this section as to the disposition of a proposal patient does not lend itself to an analogy of an administrative hearing with possible resulting penalties which requires judicial review; it is not the province of the courts to interfere with a medical determination as to the type or mode of treatment a particular patient is to receive. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Magistrate's Authority.

It is within a magistrate's authority to order a defendant's transfer to a mental

health facility once the prerequisites of this section have been satisfied. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

Nature of Commitment Procedure.

The commitment procedure governed by this section is civil in nature. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

The plain language of I.C. § 66-337 bonds those committed under former § 18-214 [now § 18-212] and this section, and fails to distinguish altogether a separate procedure or burden of proof as between those involuntarily committed by a process civilly and those automatically committed as a result of criminal acquittal. *State v. Chilton*, 112 Idaho 823, 736 P.2d 1277 (1987).

Under § 18-212, if the court in which a criminal case is pending determines that, as a result of mental disease or defect, the defendant lacks the capacity to understand the proceedings or to assist in his own defense, the court must commit the defendant to the custody of the director of the department of health and welfare for care and treatment at an appropriate facility. Section 18-212 is limited in application to those defendants whose fitness to participate in the criminal proceedings has been drawn into question and is an alternative procedure, rather than the sole procedure to the exclusion of this section, for obtaining a commitment to a mental health facility for someone in the custody of a county sheriff. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

Validity of Confinement.

Section 66-343 (providing that a patient or his guardian, parent, or spouse may petition the probate court for further evaluation) and § 66-347 (recognizing the right of an individual to petition the district court for a writ of habeas corpus) provide safeguards whereby a patient committed to the state board of health pursuant to this section may subsequently receive consideration by the courts as to the validity of his confinement by a reexamination of his mental condition after treatment is once commenced; these safeguards insure the patient is receiving treatment required of the state board of health under this section. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Cited in: *Addington v. Texas*, 441 U.S. 418, 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979); *True v. State*, Dep't of Health & Welfare, 103 Idaho 151, 645 P.2d 891 (1982); *Stoneberg v. State*, 106 Idaho 519, 681 P.2d 994 (1984); *Barrows v. State*, 106 Idaho 901, 684 P.2d 303 (1984).

DECISIONS UNDER PRIOR LAW

ANALYSIS

Constitutionality.
 Discharge.
 Function of court.
 Habeas corpus.
 Hearing.
 Nature of commitment procedure.
 Sufficiency of affidavit.
 Validity of confinement.

Constitutionality.

Statute giving district courts jurisdiction of commitments was constitutional. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Discharge.

Fact that inebriate had been released several months before and hearing continued would not justify his subsequent release if it was not shown that at time of second hearing he was not a dipsomaniac or inebriate. *Ex parte Tierney*, 51 Idaho 279, 5 P.2d 539 (1931).

An alleged inebriate who, pursuant to an order committing him to the asylum for forty-five days, was not taken into custody for confinement therein until fifteen months after the order was made, and who was not an inebriate at the time he was taken into custody, was entitled to a discharge. *In re Noble*, 53 Idaho 211, 22 P.2d 873 (1933).

Function of Court.

The judge, after a hearing and examination, if he believes the person is so far addicted to the intemperate use of narcotics or stimulants as to have lost the power of self control, must make an order that he be confined in a designated state insane asylum. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Habeas Corpus.

A writ of habeas corpus will not secure the release of an inmate committed to an asylum, when at the hearing he was fully informed of the charge against him, allowed to produce whatever evidence he desired, was represented by counsel and did not question the sufficiency of the affidavit or process or object to the proceedings or disposition of the action. *Ex parte Tierney*, 51 Idaho 279, 5 P.2d 539 (1931).

Hearing.

In proceedings to commit a person to the insane asylum for treatment, the accused must have a reasonable opportunity to produce and examine all witnesses. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Nature of Commitment Procedure.

This is statutory proceeding exercised solely as police regulation and does not call

for exercise of judicial power within meaning of Const., Art. 5. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Proceedings for commitment of insane, under whatever form insanity may arise, are paternal in character, and are not in any sense penal. *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Statute authorizing commitment of dipsomaniac or inebriate to the asylum is paternal, not penal, and was passed under general police powers. *In re Noble*, 53 Idaho 211, 22 P.2d 873 (1931).

A commitment upon a summary hearing before a probate judge under this section was not a conclusive "determination of incapacity" within meaning of statute, providing that after judicial determination of incapacity, person of unsound mind could not contract until restoration of capacity, so as to render invalid a mortgage which was executed during a period of normalcy by the person who had been so committed. *Fleming v. Bithell*, 56 Idaho 261, 52 P.2d 1099 (1936).

Sufficiency of Affidavit.

Affidavit for commitment to asylum, substantially in language of the statute, is sufficient upon habeas corpus proceeding for release. *Ex parte Tierney*, 51 Idaho 279, 5 P.2d 539 (1931).

Validity of Confinement.

An order of commitment, which recited that an examination was for inebriety, but which showed that the subject of examination was represented by an attorney, and stated that the court found her to be so far disordered in mind as to be dangerous to health, persons, or property, though ambiguous, was capable of being reasonably construed to authorize holding the one committed as a person disordered in mind, and hence the medical superintendent of the state asylum and his bondsmen were not liable for false imprisonment for holding the patient after the expiration of the maximum period authorized for confinement of inebriates. *Hansen v. Lowe*, 61 Idaho 138, 100 P.2d 51 (1940).

Whatever irregularity, or lack, or difference appeared in an order of commitment to the insane asylum, insofar as it recited charge on

which a patient had been ordered to the district court by justice of the peace for examination, would not bind the medical superintendent of state insane asylum so as to sub-

ject him to a charge of false imprisonment for holding the patient beyond a certain period. *Hansen v. Lowe*, 61 Idaho 138, 100 P.2d 51 (1940).

RESEARCH REFERENCES

A.L.R. — Actionability of imputing to private person mental disorder or incapacity, or impairment of mental faculties. 23 A.L.R.3d 652.

Liability for malicious prosecution predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 455.

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings. 30 A.L.R.3d 523.

Admissibility on issue of sanity of expert opinion based partly on a medical, psychological or hospital reports. 55 A.L.R.3d 551.

66-329A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes. — This section was amended and redesignated as § 66-326 by S.L. 1981, ch. 114, § 19.

66-330. Transportation — Temporary detention — Notice. —

(a) After the dispositioner has designated the place of treatment, he shall notify the facility director of the disposition and of any medical, security or behavioral needs of the committed patient. The county shall deliver the patient within forty-eight (48) hours to the designated facility. Whenever practicable, the individual may be accompanied by one or more of his friends or relatives.

(b) Pending his removal to the designated place of treatment, a patient taken into custody or ordered to be committed to the custody of the department director pursuant to this chapter may be detained in his home, a licensed foster home, or any other suitable facility under such reasonable conditions as the dispositioner may fix, but he shall not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The dispositioner shall take such reasonable measures, to secure proper mental health care and treatment of an individual temporarily detained pursuant to this chapter.

(c) The dispositioner shall notify the court, the patient's attorney and either the patient's spouse, guardian, adult next of kin or friend, of the facility to which the patient has been dispositioned. [1951, ch. 290, § 15, p. 622; am. 1959, ch. 207, § 9, p. 439; am. 1973, ch. 173, § 11, p. 363; am. 1974, ch. 165, § 10, p. 1405; am. and redesign. 1981, ch. 114, § 20, p. 169; am. 1991, ch. 210, § 3, p. 494.]

STATUTORY NOTES

Prior Laws. — Former § 66-330, which comprised 1951, ch. 290, § 14, p. 622; am. 1959, ch. 207, § 8, p. 439; am. 1973, ch. 173, § 10, p. 363; am. 1974, ch. 165, § 9, p. 1405, was repealed by S.L. 1981, ch. 114, § 2.

Compiler's Notes. — This section which was formerly compiled as § 66-331 was transferred by amendment by S.L. 1981, ch. 114, § 20 to become § 66-330.

66-331. Care and treatment in a federal facility. — (a) If an involuntary patient committed pursuant to the provisions of section 66-329, Idaho Code, is eligible for care or treatment by any agency of the United States, the department director or his designee, upon receipt of a certificate from such agency showing that facilities are available and that the involuntary patient is eligible for care and treatment therein, may authorize the involuntary patient to be placed in the custody of such agency for care and treatment.

(b) Upon effecting any such transfer, the department director or his designee shall notify the committing court, the involuntary patient's attorney and either the involuntary patient's spouse, guardian, adult next of kin or friend, as stated on the order of commitment, of such transfer. Records pertaining to the involuntary patient shall be sent by the sending facility to the receiving facility as soon as possible.

(c) When admitted to any facility pursuant to subsection (a) of this section, by any such agency within or without the state, the involuntary patient shall be subject to the rules and regulations of the agency. The chief officer of any facility operated by such agency shall, with respect to involuntary patients admitted to that facility pursuant to subsection (a) of this section, be vested with the same powers as the department director with respect to detention, custody, transfer, conditional release or discharge. Jurisdiction shall be retained in appropriate courts of this state at any time to inquire into the mental condition of an involuntary patient admitted to a facility pursuant to subsection (a) of this section and to determine the necessity for continuance of the person's commitment, and every order of commitment issued pursuant to section 66-329, Idaho Code, shall be so conditioned.

(d) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to any agency of the United States, and any transfer of any committed person to any agency of the United States for care and treatment, shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order, or the entity effecting the transfer; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of the person's commitment, as is provided for persons committed by the courts of this state in subsection (c) of this section. Consent is hereby given to the application of the law of the committing state or the District of Columbia in respect to the authority of the chief officer of any facility of an agency of the United States with respect to detention, custody, transfer, conditional release or discharge under this section.

(e) The chief officer of any facility operated by any agency of the United States shall, with respect to persons admitted to that facility pursuant to subsection (a) of this section, report to the committing court, the department director or his designee, the person's spouse, guardian, next of kin or friend

as stated on the order of commitment as follows: within the first ninety (90) days and every one hundred twenty (120) days thereafter as to whether or not conditions justifying involuntary care and treatment continue to exist and upon conditional release, upon transfer between facilities, or upon discharge. [I.C., § 66-331, as added by 1981, ch. 114, § 21, p. 169.]

STATUTORY NOTES

Compiler's Notes. — Former § 66-331 is now compiled as § 66-330.

66-332. Notice of commitment. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 290, § 16, p. 622; am. 1959, ch. 207, § 10, p. 439; am. 1973, ch. 173, § 12, p. 363; am. 1974, ch. 165, § 11, p. 1405, was repealed by S.L. 1981, ch. 114, § 2.

66-333. Examination of newly admitted patients. — Every patient committed to the custody of the department director pursuant to the provisions of section 66-329, Idaho Code, and admitted to an inpatient facility shall receive a physical and mental health examination as soon as practicable after admission. [1951, ch. 290, § 17, p. 622; am. 1953, ch. 264, § 2, p. 455; am. 1959, ch. 207, § 11, p. 439; am. 1973, ch. 173, § 13, p. 363; am. 1974, ch. 165, § 12, p. 1405; am. 1981, ch. 114, § 22, p. 169.]

66-334. Transfer of patients between certain inpatient treatment facilities. — (a) The department director or his designee may transfer, or authorize the transfer of, an involuntary patient from one inpatient treatment facility to another, if he determines that it would be consistent with the mental health needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given to the patient's attorney, either the patient's spouse, guardian, adult next of kin or friend and the committing court.

(b) Upon receipt of a certificate of an agency of any other state or private facility in any state, that facilities are available for the care or treatment of any patient committed or otherwise being cared for and treated pursuant to this chapter and that the patient is eligible for care or treatment in a facility of such agency, or if the patient or his next of kin or his guardian wish to have him cared for in some other facility, the department director or his designee may transfer him to such facility for care or treatment. Upon effecting any such transfer, the patient's attorney, either the patient's spouse, guardian, adult next of kin or friend and the committing court shall be immediately notified of such transfer. Any patient transferred as herein provided shall be deemed to be in the custody of such facility to the same extent and subject to the same limitations as if he had been ordered to be placed in its custody under section 66-329, Idaho Code.

(c) Records pertaining to the patient and retained by the sending facility shall be forwarded to the receiving facility within a reasonable time prior to or after the patient's transfer.

(d) Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of any patient so transferred and to determine the necessity for continuance of the commitment. [1951, ch. 290, § 18, p. 622; am. 1959, ch. 207, § 12, p. 439; am. 1973, ch. 173, § 14, p. 363; am. 1974, ch. 165, § 13, p. 1405; am. 1981, ch. 114, § 23, p. 169.]

JUDICIAL DECISIONS

ANALYSIS

Approval of court.
Authority to admit.

Approval of Court.

Where an inmate had been committed to mental health facility after being acquitted of a first degree murder charge by reason of mental disease or defect excluding responsibility, the department of health and welfare had authority to transfer the inmate from one mental health institution to another without prior approval of the district court that had committed him but did not have authority to discharge or conditionally release him without first obtaining approval from the court.

State v. Nielson, 97 Idaho 330, 543 P.2d 1170 (1975).

Authority to Admit.

The Mental Health Act provides the sole authority to admit any juvenile to the department of health and welfare's (department) state hospital and mental health system, regardless of how they were originally committed to the department's care and custody. Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1989).

66-335. Commitment of mentally ill convicts. — Mentally ill convicts may be received into said facilities in accordance with rules and regulations adopted by the board of health and welfare acting in conjunction with the state board of correction. [1951, ch. 290, § 19, p. 622; am. 1973, ch. 173, § 15, p. 363; am. 1981, ch. 114, § 24, p. 169.]

JUDICIAL DECISIONS

Cited in: State v. Hargis, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

66-336. Any person mentally ill may be hospitalized. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1951, ch. 290, § 20, p. 622, was repealed by 1973, ch. 173, § 16.

66-337. Review, termination of commitment and discharge of patients. — (a) The department director or his designee shall as frequently as practicable but at least once at the end of the first ninety (90) days examine or cause to be examined every patient committed to his custody or admitted to an inpatient facility of the state of Idaho, and determine whether to conditionally release, discharge or terminate the commitment of the patient. If the patient has not been conditionally released, discharged, or had the commitment terminated a similar review shall be conducted every one hundred twenty (120) days thereafter. A report of each review and determination regarding an involuntary patient shall be sent to the com-

mitting court, prosecuting attorney of the county of commitment, if any, the patient's attorney, and either the patient's spouse, guardian, next of kin or friend.

(b) The commitment of an involuntary patient shall be terminated if the patient is no longer mentally ill or is no longer likely to injure himself or others or is no longer gravely disabled; provided, that patients admitted under section 18-214, Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections 18-212(4) and 66-329, Idaho Code, as unfit to proceed, may not be released from an inpatient facility unless thirty (30) days before such release, the department director or his designee shall notify the committing court and prosecuting attorney of the contemplated release.

(c) Upon notification of intention to release from an inpatient facility either a patient admitted under section 18-214, Idaho Code, acquitted of criminal charges filed prior to July 1, 1982, on grounds of mental disease or defect, or committed pursuant to sections 18-212(4) and 66-329, Idaho Code, as unfit to proceed, and upon motion of an interested party or the court on its own motion, the court shall determine whether the conditions justifying such release exist. In making such determination, the court may order an independent examination of the patient. The cost of such independent examination must be borne by the party making the motion or, if indigent, the county having jurisdiction of the case. If no motion is made, the patient may be released according to the notice.

(d) Section 18-214, Idaho Code, shall remain in full force and effect for every individual previously acquitted pursuant to section 18-213, Idaho Code. Section 18-214, Idaho Code, as last amended by section 2, chapter 13, laws of 1977, which is placed here for reference only and is not a reenactment of section 18-214, Idaho Code, and reads as follows:

18-214. Commitment of acquitted defendant — Conditional release — Revocation of release within five years. (1) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the director of the department of health and welfare to be placed in an appropriate institution for custody, care and treatment.

(2) If the director of the department of health and welfare is of the view that a person committed to his custody, pursuant to paragraph (1) of this section, may be discharged or released on condition without danger to himself or to others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the prosecuting attorney of the county from which the defendant was committed. The court shall thereupon appoint at least two (2) qualified psychiatrists to examine such person and to report within sixty (60) days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examination and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the director of the department of health and welfare as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed pursuant to paragraph (2) of this section and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the director of the department of health and welfare, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(4) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the custody of the director of the department of health and welfare subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the director of the department of health and welfare. However, no such application by a committed person need be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge.

(6) If a defendant escapes from custody during his confinement, the director shall immediately notify the court from which committed, the prosecuting attorney and the sheriff of the county from which committed. The court shall forthwith issue an order authorizing any health officer, peace officer, or the director of the institution from which the defendant escaped, to take the defendant into custody and immediately return him to his place of confinement. [1951, ch. 290, § 21, p. 622; am. 1959, ch. 207, § 13, p. 439; am. 1973, ch. 173, § 17, p. 363; am. 1974, ch. 165, § 14, p. 1405; am. 1981, ch. 114, § 25, p. 169; am. 1982, ch. 368, § 13, p. 919; am. 1987, ch. 59, § 2, p. 105; am. 2000, ch. 234, § 3, p. 656.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1987, ch. 59 read: "Section 67-513, Idaho Code, states: 'The repeal of any law creating a

criminal offense does not constitute a bar to the prosecution and punishment of an act already committed in violation of the law so

repealed, unless the intention to bar such prosecution and punishment is expressly declared in the repealing act.' Senate bill no. 1396, second regular session of the forty-sixth Idaho legislature, chapter 368, laws of 1982, abolished the insanity defense for a 'person against whom a criminal complaint is filed on or after July, 1982.' The absence in senate bill no. 1396 of a procedure for those previously found not guilty on the basis of mental disease or defect and involuntarily committed to a state mental health facility was NOT a revelation by 'this state's legislature . . . that it has little or no interest in delineating upon whom the initial burden of proof lies during a conditional release hearing for those involuntarily committed under I.C. section 18-214.' Nor was the legislature 'abdication its authority in this regard.' (State v. Chilton, #1620, Feb. 5, 1987, slip op. at 10) As the legislature of the state of Idaho clearly sets forth in section 14 of senate bill no. 1396: 'This act . . . shall apply to those persons against whom a criminal complaint is filed on or after July 1, 1982.' Thus, given the provisions of section 67-513, Idaho Code, section 1 of senate bill no.

1396 would not apply to those persons against whom a criminal complaint was filed before July 1, 1982, and with respect to those persons, the repeal of sections 18-207, 18-208, 18-209, 18-213, and 18-214, Idaho Code, would not apply. Thus for those individuals against whom a criminal complaint was filed before July 1, 1982, the provisions of sections 18-207, 18-208, 18-209, 18-213, and 18-214, Idaho Code, were, have been and are in full force and effect. The legislative intent was, and continues to be, that the procedures set forth in section 18-214, Idaho Code, for release of an individual previously acquitted on the basis of mental disease or defect are to apply to that limited class of individuals."

Compiler's Notes. — Section 18-214, referred to in subsections (b) and (c), was repealed by S.L. 1982, ch. 368, § 1.

Effective Dates. — Section 14 of S.L. 1982, ch. 368 read: "This act shall be in full force and effect and shall apply to persons against whom a criminal complaint is filed on or after July 1, 1982."

Section 3 of S.L. 1987, ch. 59 declared an emergency. Approved March 20, 1987.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

—Basis for continued confinement.

—Conditional release.

Due process violation.

Equal protection.

Hearing.

—Burden of proof.

Report of review.

Constitutionality.

Former termination standard (see now subsection (d)) violated due process and was, therefore, unconstitutional. *Gafford v. State*, 127 Idaho 472, 903 P.2d 61 (1995), cert denied, 516 U.S. 1173, 116 S. Ct. 1265, 134 L. Ed. 2d 212 (1996).

—Basis for Continued Confinement.

Because subsection (d) of this section which allows for the continued confinement of insanity acquittees on the basis of dangerousness alone, is unconstitutional, in a proceeding for writ of habeas corpus, in which applicant seeks release from commitment, subsection (b) of this section applies, and the state will be required to establish by clear and convincing evidence that applicant continues to suffer from his mental condition and continues to present a danger to himself or others. *Henry v. State*, 127 Idaho 349, 900 P.2d 1360 (1995).

Because subsection (d) of this section, which allows for the continued confinement of insanity acquittees on the basis of dangerousness alone, is unconstitutional in light of the

principles enumerated in *Foucha v. Louisiana*, 504 U.S. 71, 112 S.Ct. 1780, 118 L.Ed.2d 437 (1992), defendant's future confinement, in the absence of a legislative response, will be governed by the terms for release contained in subsection (b) of this section and the state will be required to establish, by clear and convincing evidence, that defendant continues to suffer from the mental condition that was adjudicated a "mental illness" in earlier proceedings and that he continues to present a danger to himself or others. *Nielsen v. State*, 127 Idaho 449, 902 P.2d 474 (1995).

—Conditional Release.

Only the portions of subsection (d) of this section regarding future confinement were invalidated by *Foucha v. Louisiana*, 504 U.S. 71, 118 L. Ed. 2d. 437 112 S. Ct. 1780 (1992); therefore petitioner's case was remanded for further proceedings pursuant to the conditional release provisions of subsection (d) of this section remaining in force. *State v. Nielsen*, 131 Idaho 494, 960 P.2d 177 (1998).

Due Process Violation.

Where defendant did not contend that his confinement was illegal because of any deficiency in a prior judgment, but because the state perpetuated his confinement in violation of the Due Process Clause of the Fourteenth Amendment, he did not seek to have the rule of *Foucha v. Louisiana*, 504 U.S. 71, 112 S. Ct. 1780, 118 L.Ed.2d 437 (1992), applied retroactively; he sought the prospective application of that rule to his present and continued confinement and accordingly, the retroactivity rules cited by the state and relied upon by the district court had no application. *Gafford v. State*, 127 Idaho 472, 903 P.2d 61 (1995), cert denied, 516 U.S. 1173, 116 S. Ct. 1265, 134 L. Ed. 2d 212 (1996).

Equal Protection.

Since the differences between the release procedures under §§ 66-327, 66-343 and this section regarding persons involuntarily committed under § 66-329, and the procedures under former statute requiring automatic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered the public safety than may be appropriate for persons committed under § 66-329, defendants committed under the automatic commitment statute were not denied equal protection of the law. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Hearing.

—Burden of Proof.

Individual committed under repealed § 18-

214 (now repealed) was not required to bear the initial burden of proof at his conditional release hearing. However, where the record was replete with evidence justifying the trial court's conclusion that the defendant posed a significant danger to himself and others if he went without medication, and that the defendant demonstrated no appreciation for the necessity of his treatment, nor willingness to abide by any terms of the conditional release, trial court's failure to apply the proper burden of proof was harmless error. *State v. Chilton*, 112 Idaho 823, 736 P.2d 1277 (1987).

The plain language of this section bonds those committed under repealed § 18-214 (now repealed) and § 66-329, and fails to distinguish altogether a separate procedure or burden of proof as between those involuntarily committed by a process civilly and those automatically committed as a result of criminal acquittal. *State v. Chilton*, 112 Idaho 823, 736 P.2d 1277 (1987).

Report of Review.

The trial judge is entitled to use reports ordered pursuant to this section, regardless of whether the reports have been formally admitted into evidence; however, such entitlement is subject to the right of the committed person to subpoena the doctors providing reports for cross-examination, should the committed acquittee so move. *State v. Chilton*, 112 Idaho 823, 736 P.2d 1277 (1987).

Cited in: *True v. State, Dep't of Health & Welfare*, 103 Idaho 151, 645 P.2d 891 (1982).

RESEARCH REFERENCES

A.L.R. — Liability of one releasing institutionalized mental patient for harm he causes. 38 A.L.R.3d 699.

66-338. Conditional release. — Except for patients confined pursuant to section 18-211, 18-212, 18-214 or 20-520, Idaho Code, upon determining that a patient may be released without imminent risk or harm due to mental illness, the department director or his designated representative may release a patient from an inpatient treatment facility on the condition that the patient receive outpatient treatment pursuant to a written treatment plan as specified by the department director or his designee or as amended pursuant to this chapter. For purposes of this chapter, "conditional release" shall refer to the situation in which a patient is discharged from an inpatient treatment facility and dispositioned to an outpatient facility, but shall not include absences, such as escape or other absences wherein the patient is expected to return to the inpatient facility upon a certain date or

occurrence of an event. [1951, ch. 290, § 22, p. 622; am. 1959, ch. 207, § 14, p. 439; am. 1969, ch. 29, § 1, p. 53; am. 1973, ch. 173, § 18, p. 363; am. 1974, ch. 165, § 15, p. 1405; am. 1981, ch. 114, § 26, p. 169; am. 1983, ch. 173, § 2, p. 479; am. 1998, ch. 90, § 2, p. 315; am. 2004, ch. 23, § 12, p. 25.]

STATUTORY NOTES

Compiler's Notes. — Section 18-214 referred to in the first sentence was repealed. See § 66-337(d).

66-339. Rehospitalization of patients conditionally released from inpatient treatment facilities — Procedure. — (a) Proceedings for the rehospitalization of a patient conditionally released from an inpatient treatment facility may be commenced by the filing of a written application with a court of competent jurisdiction by a prosecuting attorney, judge, designated examiner or other person interested in the patient's welfare.

(b) The application shall state the patient's name and last known address; the name and address of either the patient's spouse, guardian, next of kin or friend, if any; and a simple and precise statement of the facts showing that either the patient has violated a condition of the release or is in need of outpatient commitment, or is again in need of placement in an inpatient treatment facility.

(c) Upon receipt of an application, the court shall issue notice of the time and place of hearing not more than five (5) days, excluding Saturdays, Sundays and holidays, from the filing of the application, ensure that the notice and copy of the application are served on the patient, ensure that the patient is represented by counsel and is advised of his or her right to challenge the allegations of the application, ensure that the patient is examined by two (2) designated examiners; and enter such supplemental orders as may be necessary to protect the patient pending the hearing.

(d) The court shall authorize an outpatient commitment as set out in section 66-339A, Idaho Code, or authorize a dispositioner to enter a change in disposition to an inpatient treatment facility if, at the hearing, conducted substantially as a hearing under section 66-329, Idaho Code, the court finds by clear and convincing evidence that the patient:

- (1) Has a mental illness;
- (2) Either (i) has violated a condition of the release or (ii) is again in need of placement in an inpatient treatment facility; and
- (3) Either (i) is likely to injure himself or others; (ii) is gravely disabled; or (iii) that the course of the patient's particular mental disorder is such that the patient is likely to injure himself or others or become gravely disabled in the foreseeable future if the patient is not placed in an inpatient treatment facility.

(e) Within twenty-four (24) hours of the court's authorization, a dispositioner shall determine the least restrictive available inpatient treatment facility consistent with the needs of the patient to be rehospitalized. Within seventy-two (72) hours of the court's authorization, the sheriff of the

county in which the patient is present shall transport the patient to the facility designated by the dispositioner. The department of health and welfare shall assume responsibility for the usual and customary treatment costs, as defined in section 66-327(b), Idaho Code, after the patient is dispositioned and transported to a state facility. [I.C., § 66-339, as added by 1983, ch. 173, § 3, p. 479; am. 1998, ch. 90, § 3, p. 315.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

Prior Laws. — Former § 66-339, which comprised S.L. 1951, ch. 290, § 23, p. 622; am. 1959, ch. 207, § 15, p. 439; am. 1973, ch.

173, § 19, p. 363; am. 1974, ch. 165, § 16, p. 1405; am. 1981, ch. 114, § 27, p. 169, was repealed by S.L. 1983, ch. 173, § 1.

Effective Dates. — Section 9 of S.L. 1998, ch. 90 provided this act shall be in full force and effect on and after July 1, 1999.

JUDICIAL DECISIONS

ANALYSIS

Constitutionality.

Due process requirements.

Constitutionality.

A patient who has been conditionally released from institutional hospitalization possesses a liberty interest which is entitled to due process safeguards; insofar as the language of § 66-338 and former subsection (b) of this section excluded the necessity of notice and a hearing, they failed to pass constitutional scrutiny. *True v. State, Dep't of Health & Welfare*, 103 Idaho 151, 645 P.2d 891 (1982) (decision limited to §§ 66-338 and 66-339 as they existed prior to 1981 amendments.).

Due Process Requirements.

A mental health patient whose conditional release status is subject to revocation is entitled to mandatory notice and a hearing to follow as soon as is reasonably possible after the patient's return to the hospital; specifically, the minimal due process requirements

are: (1) prompt written notice to the patient of the reasons for the evidence relied on justifying rehospitalization as well as notice of the right to challenge the allegations and (2) a hearing before a neutral hearing body to be held as soon as is reasonably possible following the patient's rehospitalization, at which time the patient is to be afforded the right to counsel, the right to present evidence and examine witnesses, and upon a decision sustaining the order of rehospitalization, the right to a written statement by the fact-finding body as to the reasons for revocation of the patient's conditional release status. *True v. State, Dep't of Health & Welfare*, 103 Idaho 151, 645 P.2d 891 (1982).

Cited in: *Flores v. Lodge*, 101 Idaho 533, 617 P.2d 837 (1980).

66-339A. Outpatient commitment. — A person may be committed to outpatient treatment for a period of up to one (1) year if, after a court hearing conducted substantially similar to the one outlined in section 66-329, Idaho Code, the court determines, on the basis of clear and convincing evidence that:

- (1) The person is diagnosed as having a mental illness; and
- (2) The person, without the requested treatment:
 - (a) Is likely to cause harm to himself or to suffer substantial mental or emotional deterioration, or become gravely disabled, or
 - (b) Is likely to cause harm to others; and
- (3) The person lacks capacity to make an informed decision concerning his need for treatment; and

(4) The person has previously been hospitalized for treatment of mental illness and has by history substantially failed to comply on one (1) or more occasions with the prescribed course of treatment outside the hospital; and

(5) A treatment plan has been prepared which includes specific conditions with which the patient is expected to comply, together with a detailed plan for reviewing the patient's medical status and for monitoring his or her compliance with the required conditions of treatment; and

(6) There is a reasonable prospect that the patient's disorder will respond to the treatment proposed in the treatment plan without having to be involuntarily committed to an inpatient facility if the patient complies with the treatment requirements specified in the court's order; and

(7) The physician or treatment facility which is to be responsible for the patient's treatment under the commitment order has agreed to accept the patient. [I.C., § 66-339A, as added by 1998, ch. 90, § 4, p. 315.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1998, ch. 90 provided this act shall be in full force and effect on and after July 1, 1999.

66-339B. Outpatient commitment hearing. — (1) Proceedings for the involuntary care and treatment of a person with a mental illness in an outpatient setting by the department may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the proposed patient, or by a licensed physician, prosecuting attorney, or other public official of a municipality, county or of the state of Idaho, regional mental health authority (RMHA) treating professional, or the director of any facility in which such patient may be.

(2) The application shall state: (i) the name and last known address of the proposed patient; (ii) the name and address of either the spouse, guardian, next of kin or friend of the proposed patient; (iii) that more restrictive treatment would be necessary or required if the illness progressed as prior history indicated; (iv) if the proposed patient is, at the time of the application, a voluntary patient; (v) a simple and precise statement showing that the proposed patient has previously been diagnosed with a mental illness, that the proposed patient has previously refused to accept treatment outlined in a treatment plan, and is now refusing such treatment; (vi) the observations indicating the current progression of the illness, that the expected progression would more than likely result in a condition where the proposed patient is likely to injure himself or others or suffer substantial mental or emotional deterioration, or likely to become gravely disabled; and (vii) whether or not there is a less restrictive alternative.

(3) Any such petition shall be accompanied by the report of a designated examiner stating that he has personally examined the proposed patient within the last fourteen (14) days and is of the opinion that the proposed patient (i) has a history of mental illness; (ii) that as a result of the progression of this illness the proposed patient without treatment is likely

to injure himself or others or suffer substantial mental or emotional deterioration, or become gravely disabled; (iii) that the proposed patient has a treatment plan that can be satisfied by outpatient services; (iv) that the proposed patient has failed to comply on one (1) or more occasions with a prescribed course of treatment; and (v) that the proposed patient now refuses or lacks the capacity to make informed decisions about the necessity for continued treatment, or (vi) a written statement by the applicant that the proposed patient has refused to submit to examination by a designated examiner. The designated examiner shall report his findings as to the mental condition of the proposed patient and the appropriateness of the patient receiving treatment in an outpatient commitment setting or in an inpatient facility to the court within the forty-eight (48) hours. The report shall be in the form of a written certificate which shall be filed with the court.

(a) If the designated examiner's certificate states a belief that the proposed patient meets the above established criteria for outpatient commitment the judge of such court shall issue an order authorizing any regional mental health authority, health officer, peace officer, or director of a facility to take the proposed patient to an outpatient facility in the community in which the proposed patient is residing or to the nearest place of treatment as designated by the RMHA. In addition, the court shall authorize treatment as described in the treatment plan. The conditions of the treatment plan shall be specified, and a copy of that treatment plan shall be provided to the patient as soon as practicable after the hearing. Under no circumstances shall the proposed patient be detained in a nonmedical unit used for the detention of individuals charged with or convicted of penal offenses.

(b) If the designated examiner's certificate states a belief that the proposed patient does not meet the above established criteria for outpatient commitment, the court may terminate the proceedings and dismiss the application without taking any further action.

(4) An opportunity to be represented by counsel shall be afforded to every patient proposed for an outpatient commitment, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel in accordance with chapter 8, title 19, Idaho Code, no later than the time the petition is received by the court. Notice of the petition shall be given to the RMHA by the clerk of the court by mailing to an address the RMHA shall provide. In addition to the right to counsel, the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The proposed patient shall be required to be present at the hearing unless the court determines that the mental or physical state of the proposed patient is such that his presence at the hearing would be detrimental to the proposed patient's health or would unduly disrupt the proceedings.

(5) The hearing shall be held at a facility, at the home of the proposed patient, or at any other suitable place not likely to have a harmful effect on the proposed patient's physical or mental health. Venue for the hearing shall be in the county of residence of the proposed patient, unless the patient

waives the right to have venue fixed there. The court on its own motion may find that venue in the county where the proposed patient is found is proper, if it is in the best interest of the proposed patient. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in as informal a manner as may be consistent with the rules of evidence.

(6) In all proceedings under this section, any existing provision of the law prohibiting the disclosure of confidential communications between the designated examiner and proposed patient shall not apply and any designated examiner who shall have examined the proposed patient shall be a competent witness to testify as to the proposed patient's condition.

(7) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the proposed patient:

- (a) Has a mental illness; and
- (b) Has a prescribed course of treatment for this mental illness; and
- (c) Has failed to comply with a prescribed course of treatment on one (1) or more occasions outside an inpatient facility; and
- (d) Because of a deterioration resulting from the failure to comply with the prescribed course of treatment is likely to suffer substantial mental or emotional deterioration or be likely to injure himself or others, or become gravely disabled due to mental illness;

the court shall order the proposed patient committed to the department only for the purposes of outpatient commitment for an indeterminate period of time not to exceed one (1) year.

The conditions of the treatment plan shall be specified, and a copy of that treatment plan shall be provided to the patient as soon as practicable after the hearing. The RMHA, through its dispositioner, shall determine within twenty-four (24) hours the least restrictive available outpatient facility consistent with the needs of the patient and the treatment plan.

The order of outpatient commitment shall state: (i) whether the proposed patient lacks capacity to make informed decisions about treatment; and (ii) the name and address of the patient's attorney; and (iii) either the patient's spouse, guardian, adult next of kin, or friend; and (iv) whether or not the patient may be involuntarily medicated with medication described in the treatment plan.

(8) If at any time during the one (1) year (or any subsequent) outpatient commitment a patient substantially fails or refuses to comply with the treatment plan, as it may be amended from time to time by the treating facility or physician, the physician or place of treatment to whose care the patient was dispositioned shall proceed in accordance with section 66-339C, Idaho Code.

(9) Notwithstanding other provisions of these statutes, and subject to the provisions of federal law, staff of a facility in which patients are being treated may communicate with outpatient clinicians without patient consent in order to develop outpatient treatment plans.

(10) Nothing in this chapter or in any rule adopted pursuant thereto shall be construed to authorize the detention or involuntary outpatient commitment of an individual who:

(a) Is epileptic, mentally deficient, mentally retarded, impaired by chronic alcoholism or drug abuse, or aged, unless in addition to such condition, such person is mentally ill; or

(b) Is a patient under treatment by spiritual means alone, through prayer, in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof and who asserts to any authority attempting to detain him that he is under such treatment and who gives the name of a practitioner so treating him to such authority.

(11) The commitment shall continue for an indeterminate time not to exceed one (1) year. It may be terminated sooner by the RMHA, the treating physician, or the court. It may be renewed upon application under this section by the RMHA, the treating physician, relative, spouse, guardian, or prosecuting attorney, upon the failure of the patient to continue with a treatment plan. It may be terminated sooner by the RMHA, the treating physician, or upon application of the patient if the patient is no longer mentally ill, or is no longer in need of following a treatment plan. [I.C., § 66-339B, as added by 1998, ch. 90, § 5, p. 315.]

STATUTORY NOTES

Effective Dates. — Section 9 of S.L. 1998, ch. 90 provided that this act shall be in full force and effect on and after July 1, 1999.

66-339C. Noncompliance with court order. — (1) If a patient fails to comply with the requirements specified in the outpatient commitment order, and the RMHA, the physician or staff of the treatment facility believes that there is a significant risk of deterioration in the patient's conditions, the director of the facility, physician, or RMHA shall notify law enforcement.

(2) The outpatient commitment order constitutes a continuing authorization for law enforcement, upon request of the director of the outpatient facility, the physician, or the RMHA, to transport the patient to the designated outpatient treatment facility or the physician's office for the purpose of making reasonable efforts to obtain the person's compliance with the requirements of the outpatient commitment order. However, the patient may not be detained at the facility or the physician's office for more than one (1) hour, and may not be physically coerced to take prescribed medications unless the court has entered on the outpatient commitment order an authorization for the nonconsensual delivery of prescribed medication. If a patient has been involuntarily medicated, a report of such action shall be made within twenty-four (24) hours to the court, the patient's guardian, or next of kin by the treatment provider.

(3) If a patient fails to comply with the requirement of the court order, and the RMHA, the physician or staff of the treatment facility believes that there is a significant risk of deterioration, the RMHA, the director of the facility or the physician shall notify the original petitioner for outpatient

commitment and the prosecuting attorney of the county where the patient is found and shall recommend an appropriate disposition.

Within seventy-two (72) hours of receiving the notice transmitted pursuant to this section that a patient has failed to comply with the requirements of the outpatient commitment order, the original petitioner for outpatient commitment, the RMHA and the prosecuting attorney of the county where the patient is found or resides may petition the court for a supplemental hearing, or may proceed under any other section of this chapter. If a petition for supplemental hearing is filed, the court shall hold a supplemental hearing in accordance with the procedures specified in section 66-329, Idaho Code, within forty-eight (48) hours. After hearing evidence concerning the patient's current condition and compliance with the court order, the court shall make whichever of the following dispositions it deems appropriate:

(a) Upon finding that hospitalization is necessary to prevent the patient from harming himself or others or to prevent substantial deterioration of the patient's mental or emotional conditions, the court shall order a commitment proceeding under section 66-329, Idaho Code, and may temporarily commit the patient to an inpatient facility pending hearing on a petition or application for commitment to an inpatient facility.

(b) Upon finding that the patient does not meet the criteria for inpatient commitment and continues to meet the criteria for outpatient commitment set forth in section 66-329B [66-339B], Idaho Code, and that additional outpatient treatment appears warranted, the court shall renew or modify the order to outpatient commitment.

(c) Upon finding that neither condition in subparagraphs (a) nor (b) are met, the court shall rescind the commitment order.

(d) Nothing provided in this section shall limit the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by section 66-326, Idaho Code. [I.C., § 66-339C, as added by 1998, ch. 90, § 6, p. 315.]

STATUTORY NOTES

Compiler's Notes. — The bracketed statutory reference in subdivision 3(b) was inserted by the compiler.

Effective Dates. — Section 9 of S.L. 1998, ch. 90 provided that this act shall be in full force and effect on and after July 1, 1999.

66-340. Appeal from order of rehospitalization. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 290, § 24, p. 622; am. 1959, ch. 207, § 16, p. 439; am. 1973, ch. 173,

§ 20, p. 363; am. 1974, ch. 165, § 17, p. 1405; am. 1981, ch. 114, § 28, p. 169, was repealed by S.L. 1983, ch. 173, § 1.

66-341. Exemptions from liability. — No agency, public or private facility, nor an employee of a public or private facility, nor the superintendent, professional person in charge, or attending staff of any such facility, nor any public official performing functions necessary to the administration of this chapter, nor a peace officer responsible for detaining or transporting

a person pursuant to this chapter, shall be civilly or criminally liable for detaining, failing to detain, diagnosing, transporting, treating or releasing a person pursuant to this chapter; provided that such duties were performed according to the procedures of this chapter in good faith and without gross negligence. [I.C., § 66-341, as added by 1981, ch. 114, § 29, p. 169; am. 2006, ch. 214, § 6, p. 645.]

STATUTORY NOTES

Prior Laws. — Former § 66-341, which comprised S.L. 1951, ch. 290, § 25, p. 622, was repealed by S.L. 1981, ch. 114, § 2.

Amendments. — The 2006 amendment, by ch. 214, inserted “failing to detain”.

66-342. Change in disposition — Appeal. — (a) Upon the recommendation of a facility director, a dispositioner may redetermine the least restrictive available facility for involuntary patients who are not, at the time of the redetermination, in an inpatient treatment facility. For purposes of this section, a group living setting shall be considered more restrictive than the involuntary patient’s home; a supervised residential facility shall be considered more restrictive than a group living setting; and an inpatient treatment facility shall be considered more restrictive than a supervised residential facility. A facility director may request subsequent redeterminations.

(b) Notice of any change in disposition shall be filed with the committing court and sent to the involuntary patient’s attorney and to either the involuntary patient’s spouse, guardian, adult next of kin or friend.

(c) The involuntary patient may appeal any change in disposition to a more restrictive level of treatment to the committing court or the court in the county where the patient is found within thirty (30) days of notice of the change in disposition. Said court shall consider the treatment and security needs of the involuntary patient and available facilities and may affirm or modify the change in disposition. [I.C., § 66-342, as added by 1981, ch. 114, § 30, p. 169.]

STATUTORY NOTES

Prior Laws. — Former § 66-342, which comprised S.L. 1951, ch. 290, § 26, p. 622; am. 1953, ch. 264, § 3, p. 455, was repealed by S.L. 1959, ch. 207, § 19, p. 439.

66-343. Petition for reexamination of order of commitment. — All patients committed pursuant to section 66-329, Idaho Code, shall be entitled to a reexamination of the order for or conditions of his commitment on his own petition, or that of his legal guardian, parent, spouse, relative, attorney or friend, to the district court of the county in which the patient was committed or is found. Within three (3) years of the effective date [July 1, 1981] of this act, the department shall petition for the reexamination of all patients committed pursuant to section 66-329, Idaho Code, prior to the effective date of this act. Upon receipt of the petition the court shall determine whether the conditions justifying involuntary care and treatment continue to exist except that such proceedings shall not be required to be

conducted if the petition is filed sooner than four (4) months after the issuance of the order of commitment or sooner than one (1) year after the filing of a previous petition under this section. [1951, ch. 290, § 27, p. 622; am. 1959, ch. 207, § 17, p. 439; am. 1973, ch. 173, § 21, p. 363; am. 1981, ch. 114, § 31, p. 169.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

JUDICIAL DECISIONS

ANALYSIS

Equal protection.
Validity of confinement.

Equal Protection.

Since the differences between the release procedures under §§ 66-327, 66-337 and this section regarding persons involuntarily committed under § 66-329, and the procedures under former statute requiring automatic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered the public safety than may be appropriate for persons committed under § 66-329, defendants committed under the automatic commitment statute were not denied equal protection of the law. Penny v.

State, Dep't of Health & Welfare, 103 Idaho 689, 652 P.2d 193 (1982).

Validity of Confinement.

This section and § 66-347 (recognizing the right of an individual to petition the district court for a writ of habeas corpus) provide safeguards whereby a patient pursuant to § 66-329 may subsequently receive consideration by the courts as to the validity of his confinement by a reexamination of his mental condition after treatment is once commenced; these safeguards insure the patient is receiving treatment required under § 66-329. Glasco v. Brassard, 94 Idaho 162, 483 P.2d 924 (1971).

66-344. Right to humane care and treatment. — Every patient shall be entitled to humane care and treatment. [1951, ch. 290, § 28, p. 622; am. 1973, ch. 173, § 22, p. 363.]

66-345. Restraints and seclusion. — Restraints shall not be applied to a patient nor shall a patient be secluded unless it is determined that such restraint or seclusion is necessary for the patient's safety or for the safety of others. Every instance of a restraint or seclusion of a patient shall be documented in the clinical record of the patient. In addition, every instance of a restraint or seclusion shall be evaluated and the evaluation and reasons for such restraint or seclusion shall be made a part of the clinical record of the patient under the signature of a licensed physician or, as delegated through the bylaws of the hospital's medical or professional staff, other practitioners licensed to practice independently. [1951, ch. 290, § 29, p. 622; am. 1973, ch. 173, § 23, p. 363; am. 1981, ch. 114, § 32, p. 169; am. 2001, ch. 339, § 1, p. 1200.]

66-346. Right to communication and visitation — Exercise of civil rights. — (a) Every patient shall have the following rights:

- (1) To communicate by sealed mail or otherwise, with persons, inside or outside the facility and to have access to reasonable amounts of letter writing material and postage;
- (2) To receive visitors at all reasonable times;
- (3) To wear his own clothes; to keep and use his own personal possessions including toilet articles; to keep and be allowed to spend a reasonable sum of his own money for canteen expenses and small purchases; to have access to individual storage space for his private use;
- (4) To refuse specific modes of treatment;
- (5) To be visited by his attorney or any employee of his attorney's firm, or a representative of the state protection and advocacy system at any time;
- (6) To exercise all civil rights, including the right to dispose of property except property described in subsection (3) above, execute instruments, make purchases, enter into contractual relationships, and vote unless limited by prior court order;
- (7) To have reasonable access to all records concerning himself.

(b) Notwithstanding any limitations authorized under this section on the right of communication, every patient shall be entitled to communicate by sealed mail with the court, if any, which ordered his commitment.

(c) The director of a facility may deny a patient's rights under this section, except that the rights enumerated in subsections (a)(5) and (a)(6) of this section, shall not be denied by the director of the facility under any circumstances. Only in cases of emergency or when a court has determined that a patient lacks capacity to make informed decisions about treatment, may the director of a facility deny a patient's rights under subsection (a)(4) of this section. A statement explaining the reasons for any denial of a patient's rights shall be immediately entered in his treatment record and if the patient has been committed pursuant to court order, copies of such statement shall be submitted to the committing court and sent to the patient's spouse, guardian, adult next of kin or friend and attorney, if any.

(d) A list of the foregoing rights shall be prominently posted in all facilities and brought to the attention of the patient by such means as the board of health and welfare shall designate. [1951, ch. 290, § 30, p. 622; am. 1973, ch. 173, § 24, p. 363; am. 1981, ch. 114, § 33, p. 169; am. 2004, ch. 315, § 2, p. 885.]

STATUTORY NOTES

Cross References. — Commission on human rights, §§ 67-5901 — 67-5912.

RESEARCH REFERENCES

A.L.R. — Construction and application of state patient bill of rights statutes. 87 A.L.R.5th 277.

66-347. Writ of habeas corpus. — Any individual detained pursuant to this act shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any court generally empowered to issue the writ of

habeas corpus in the county in which he is detained. [1951, ch. 290, § 31, p. 622.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1951, Chapter 290, which is codified as §§ 66-317 to 66-320, 66-324, 66-

329, 66-330, 66-333 to 66-335, 66-337, 66-338, 66-343 to 66-352, 66-354, and 66-355.

JUDICIAL DECISIONS

ANALYSIS

Authority of committing court.

Burden of review.

Validity of confinement.

Authority of Committing Court.

Former section 18-214(3) granted the committing court the authority to release the individual if it found that he was no longer dangerous to himself or others, but the statute did not specifically authorize the committing court to review the conditions of care and treatment or the lack of it; similarly, the statute made no mention of relief by habeas corpus, a remedy that is specifically authorized in this section. *Flores v. Lodge*, 101 Idaho 533, 617 P.2d 837 (1980).

Burden of Review.

It cannot be said that either § 66-340 (repealed) or this section adequately protects the interests of a mental health patient whose conditional release status has been revoked since review under either provision is not mandatory and neither provision requires that the patient be apprised of the reasons for his rehospitalization; moreover, both provisions are infirm because they place the burden on the patient to bring forth sufficient

facts to justify relief from an order of rehospitalization whereas it should be the state, in cases where it seeks to deprive an individual of a protectable liberty or property interest, which must bring forth sufficient facts justifying its summary action. *True v. State, Dep't of Health & Welfare*, 103 Idaho 151, 645 P.2d 891 (1982).

Validity of Confinement.

Section 66-343 (providing that a patient or his guardian, parent, or spouse may petition the probate court for further evaluation) and this section provide safeguards whereby a patient committed pursuant to § 66-329 may subsequently receive consideration by the courts as to the validity of his confinement by a reexamination of his mental condition after treatment is once commenced; these safeguards insure the patient is receiving treatment required under § 66-329. *Glasco v. Brassard*, 94 Idaho 162, 483 P.2d 924 (1971).

Cited in: *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

66-348. Disclosure of information. — All certificates, applications, records, and reports made for the purpose of this act and directly or indirectly identifying a patient or former patient or an individual whose involuntary assessment, detention or commitment is being sought under this act shall be kept subject to disclosure according to chapter 3, title 9, Idaho Code; provided that such records may also be disclosed to any person:

(1) If the individual identified, his attorney in fact for mental health care, or his legal guardian, if any, shall consent; or

(2) If disclosure may be necessary to carry out any of the provisions of this act; or

(3) If a court directs upon its determination that disclosure is necessary and that failure to make disclosure would be contrary to the public interest. [1951, ch. 290, § 32, p. 622; am. 1953, ch. 264, § 4, p. 455; am. 1973, ch. 173, § 25, p. 363; am. 1990, ch. 213, § 91, p. 480; am. 1998, ch. 77, § 1, p. 278.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1951, Chapter 290, which is codified as §§ 66-317 to 66-320, 66-324, 66-329, 66-330, 66-333 to 66-335, 66-337, 66-338, 66-343 to 66-352, 66-354, and 66-355.

Effective Dates. — Section 5 of S.L. 1953, ch. 264 declared an emergency. Approved March 18, 1953.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

JUDICIAL DECISIONS

Cited in: Dalton v. Idaho Dairy Prods. Comm'n, 107 Idaho 6, 684 P.2d 983 (1984).

66-349. Penalty for violation. — Any person violating any provisions of sections 66-344, 66-345, 66-346, 66-347, or 66-348 [Idaho Code,] shall be guilty of a misdemeanor and subject to a fine of not more than \$500 and imprisonment for not more than one (1) year. [1951, ch. 290, § 33, p. 622.]

66-350. Detention pending judicial determination. — Notwithstanding any other provision of this act, no patient with respect to whom proceedings for judicial commitment have been commenced shall be released or discharged during the pendency of such proceedings unless ordered by the court or a judge thereof upon the application of the patient, or his legal guardian, parent, spouse, or next of kin, or upon the report of the director of the facility that the patient may be discharged with safety. [1951, ch. 290, § 34, p. 622; am. 1973, ch. 173, § 26, p. 363.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).

Compiler's Notes. — The words "this act"

refer to S.L. 1951, Chapter 290, which is codified as §§ 66-317 to 66-320, 66-324, 66-329, 66-330, 66-333 to 66-335, 66-337, 66-338, 66-343 to 66-352, 66-354, and 66-355.

66-351. Repayment of money on discharge of patient. — If, at the time of the discharge of a person from any facility, or after the death and burial of any person therein confined, there remain in the custody of the director of the facility any unexpended moneys paid for the support or maintenance of such person, they must, upon demand, be repaid to the person or his personal representative. [1951, ch. 290, § 35, p. 622; am. 1973, ch. 173, § 27, p. 363; am. 1981, ch. 114, § 34, p. 169.]

STATUTORY NOTES

Cross References. — Patients' trust fund, §§ 66-501 — 66-503.

66-352. Money found on mentally ill persons — Disposition. — Any moneys, or other things of value, found on the person of a mentally ill person at the time of proceedings for involuntary commitment must be

certified to by the judge and sent with such person to the facility, there to be delivered to the director of the facility who shall hold said money in trust as provided in chapter 5 of title 66, Idaho Code. All money received by or for a patient, voluntarily or involuntarily committed, while at the facility shall be placed in trust as provided in said chapter 5. [1951, ch. 290, § 36, p. 622; am. 1967, ch. 357, § 1, p. 1004; am. 1973, ch. 173, § 28, p. 363.]

66-353. Fees of designated examiner. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1951, ch. 290, § 37, p. 622; am. 1973, ch. 173, § 29, p. 363 was repealed by S.L. 1981, ch. 114, § 2.

66-354. Mentally ill person with assets sufficient to pay expenses — Liability of relatives. — (a) When a mentally ill person has been admitted to a state facility voluntarily or involuntarily, the director of the facility may cause an inquiry to be made as to the financial circumstances of such person and of the relatives of such person legally liable for his or her support, and if it is found that such person or said relatives, legally liable for the support of the patient, are able to pay the expenses for commitment proceedings and the charges for the care and treatment of the patient in the facility, in whole or in part, it shall be the duty of the director of the facility to collect such expenses and such charges, and if necessary to institute in the name of the state, a civil suit against the person or persons liable therefor.

(b) The following relatives shall be bound by law to provide for the expenses and charges for the commitment, care and treatment of such mentally ill person referred to in this act: husband for the wife, and the wife for the husband; the parent for his or her minor child or minor children, and the children for their parents. [1951, ch. 290, § 38, p. 622; am. 1973, ch. 173, § 30, p. 363; am. 1981, ch. 114, § 35, p. 169.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1981, ch. 114 read: "It is hereby declared by the legislature of the state of Idaho that its mentally disabled citizens are entitled to be diagnosed, cared for, and treated in as expedient a manner possible consistent with their legal rights, in a setting no more restrictive than their protection and the protection of society require, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at

liberty or be cared for privately except when necessary for the protection of themselves or society."

Compiler's Notes. — Section 42 of S.L. 1981, ch. 114 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

JUDICIAL DECISIONS

ANALYSIS

"Child" construed.
Collection of expense.
Liability of relatives.

“Child” Construed.

The word “child” in a Kentucky statute similar to the Idaho statute was held to mean a minor dependent on the parents for support in *Central Ky. Asylum for Insane v. Knighton*, 113 Ky. 156, 67 S.W. 366 (1902). State ex rel. Cromwell v. Panzeri, 76 Idaho 211, 280 P.2d 1064 (1955).

Collection of Expense.

There is a definite statutory procedure outlined for collection of expense of providing care for a mentally incompetent person but there is no provision permitting the state to sue an estate and impose a liability thereon

not imposed during the lifetime of the deceased. State ex rel. Cromwell v. Panzeri, 76 Idaho 211, 280 P.2d 1064 (1955).

Liability of Relatives.

Investigation and determination of liability of a relative must be made during the lifetime of a relative. State ex rel. Cromwell v. Panzeri, 76 Idaho 211, 280 P.2d 1064 (1955).

If an incompetent person has an estate sufficient to pay hospital charges there is no obligation to pay imposed on relatives of the incompetent. State ex rel. Cromwell v. Panzeri, 76 Idaho 211, 280 P.2d 1064 (1955).

DECISIONS UNDER PRIOR LAW

Constitutionality.

Provision of former law authorizing commissioner of public welfare to collect actual charges and expenses for care and safekeeping of patient did not deprive patient of his

property without due process of law, nor was it invalid as a delegation of legislative authority. State ex rel. Macey v. Johnson, 50 Idaho 363, 296 P. 588 (1931).

RESEARCH REFERENCES

A.L.R. — Constitutionality of statute imposing liability upon estate or relative of insane person for his support in asylum. 20 A.L.R.3d 363.

66-355. Appointment of guardian — Incompetency of mentally ill person requires separate proceedings — Liability for care and treatment costs. — The incompetency of a mentally ill person shall be determined in the same manner that incompetency is determined in any other person and shall be a separate judicial proceeding. Any guardian appointed in the case of a mentally ill incompetent person, is subject to all the provisions of the general laws of the state of Idaho in relation to guardians and wards. Whenever a mentally ill person is receiving care and treatment in a facility in the event that incompetency is adjudicated and a guardian appointed, the court on determining the incompetency must inquire into the ability of the mentally ill person to pay for his or her expenses which arise in connection with his or her care and treatment, if any, transportation to the facility, court costs for incompetency proceedings, and for the care and treatment for such person for such time as he remains in such facility, and when there are sufficient assets in the hands of the guardian, the court may order a sale of property or such part thereof as may be necessary, and from the proceeds of such sale the guardian must pay for all expenses and reasonable charges for the patient’s care and treatment, or such part as it is possible to pay, to the director of the facility in which said mentally ill person is a patient. [1951, ch. 290, § 39, p. 622; am. 1973, ch. 173, § 31, p. 363.]

STATUTORY NOTES

Cross References. — Jurisdiction, magistrates division of district court, Idaho Rules of Civil Procedure, Rule 82(c)(1).
Compiler’s Notes. — Section 41 of S.L.

1951, ch. 290, read: "If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause

and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional."

Effective Dates. — Section 42 of S.L. 1951, ch. 290, provided that it should be in full force and effect on and after July 1, 1951.

66-356. "Residence" defined. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1953, ch. 103, § 1, p. 137; am.

1973, ch. 173, § 32, p. 363 was repealed by S.L. 1981, ch. 114, § 2.

66-357. Residence requirement met by guardian. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1953, ch. 103, § 2, p. 137; am.

1973, ch. 173, § 33, p. 363 was repealed by S.L. 1981, ch. 114, § 2.

66-358. Reciprocal agreements controlled by residence definition. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1953, ch. 103, § 3, p. 137; am. 1959, ch. 207, § 18, p. 439; am. 1974, ch. 165,

§ 18, p. 1405 was repealed by S.L. 1981, ch. 114, § 2.

66-359. Patient status contributing to residence requirement. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised 1953, ch. 103, § 4, p. 137; am.

1973, ch. 173, § 34, p. 363 was repealed by S.L. 1981, ch. 114, § 2.

66-360. Commitment to veterans administration — Procedure. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised I.C., § 66-360, as added by 1971,

ch. 111, § 27, p. 233 was repealed by S.L. 1981, ch. 114, § 2.

66-361 — 66-364. Dangerously mentally ill persons and prisoners. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1971, ch. 139, §§ 1-4, p.

590; am. 1974, ch. 165, §§ 19, 20, p. 1405, were repealed by S.L. 1976, ch. 360, § 1.

CHAPTER 4

TREATMENT AND CARE OF THE DEVELOPMENTALLY DISABLED

SECTION.

- 66-401. Legislative intent.
- 66-402. Definitions.
- 66-403. Court jurisdiction.
- 66-404. Proceedings for appointment of guardians and conservators.
- 66-405. Order in protective proceedings.
- 66-406. Judicial procedure for commitment to director.
- 66-407. Change in disposition.
- 66-408. Petition for reexamination of order of guardianship or commitment.

SECTION.

- 66-409. Authority to admit developmentally disabled persons.
- 66-410. Procedure upon application to a residential facility.
- 66-411. Review and discharge.
- 66-412. Rights in facilities.
- 66-413. Individual treatment plan.
- 66-414. Developmentally disabled persons with assets sufficient to pay expenses — Liability of relatives.

66-401. Legislative intent. — It is hereby declared by the legislature of the state of Idaho in enacting chapter 4, title 66, Idaho Code, that the developmentally handicapped citizens of the state are entitled to be diagnosed, cared for, and treated in a manner consistent with their legal rights in a manner no more restrictive than for their protection and the protection of society, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at liberty or be cared for privately except when necessary for their protection or the protection of society. Recognizing that every individual has unique needs and differing abilities, it is the purpose of the provisions of this chapter to promote the general welfare of all citizens by establishing a system which permits partially disabled and disabled persons to participate as fully as possible in all decisions which affect them, which assists such persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources, and developing or regaining their abilities to the maximum extent possible. The provisions of this chapter shall be liberally construed to accomplish these purposes. [I.C., § 66-401, as added by 1982, ch. 59, § 7, p. 91.]

STATUTORY NOTES

Cross References. — Hospitalization of mentally ill, §§ 66-317 — 66-355.

State hospitals, §§ 66-114 — 66-119.

Prior Laws. — Former §§ 66-401 — 66-

405, which comprised S.L. 1939, ch. 151, §§ 1-5, p. 273; 1949, ch. 95, § 1, p. 171, were repealed by S.L. 1951, ch. 290, § 40, p. 622.

66-402. Definitions. — As used in this chapter:

(1) "Adult" means an individual eighteen (18) years of age or older.

(2) "Artificial life-sustaining procedures" means any medical procedure or intervention which utilizes mechanical means to sustain or supplant a vital function. Artificial life-sustaining procedures shall not include the administration of medication, and it shall not include the performance of any medical procedure deemed necessary to alleviate pain, or any procedure which could be expected to result in the recovery or long-term survival of the patient and his restoration to consciousness.

(3) "Department" means the Idaho department of health and welfare.

(4) "Director" means the director of the department of health and welfare.

(5) "Developmental disability" means a chronic disability of a person which appears before the age of twenty-two (22) years of age and:

(a) Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and

(b) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and

(c) Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated.

(6) "Emancipated minor" means an individual between fourteen (14) and eighteen (18) years of age who has been married or whose circumstances indicate that the parent-child relationship has been renounced.

(7) "Evaluation committee" means an interdisciplinary team of at least three (3) individuals designated by the director or his designee to evaluate an individual as required by the provisions of this chapter. Each committee must include a physician licensed to practice medicine in the state of Idaho, a licensed social worker and a clinical psychologist or such other individual who has a master's degree in psychology as designated by the department director. Each committee member must be specially qualified by training and experience in the diagnosis and treatment of persons with a developmental disability.

(8) "Facility" means the Idaho state school and hospital, a nursing facility, an intermediate care facility, an intermediate care facility for the mentally retarded, a licensed residential or assisted living facility, a group foster home, other organizations licensed to provide twenty-four (24) hour care, treatment and training to the developmentally disabled, a mental health center, or an adult and child development center.

(9) "Lacks capacity to make informed decisions" means the inability, by reason of developmental disability, to achieve a rudimentary understanding of the purpose, nature, and possible risks and benefits of a decision, after conscientious efforts at explanation, but shall not be evidenced by improvident decisions within the discretion allowed nondevelopmentally disabled individuals.

(10) "Likely to injure himself or others" means:

(a) A substantial risk that physical harm will be inflicted by the respondent upon his own person as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or

(b) A substantial risk that physical harm will be inflicted by the respondent upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or

(c) That the respondent is unable to meet essential requirements for physical health or safety.

(11) "Manage financial resources" means the actions necessary to obtain, administer and dispose of real, personal, intangible or business property, benefits and/or income.

(12) "Meet essential requirements for physical health or safety" means the actions necessary to provide health care, food, clothing, shelter, personal hygiene and/or other care without which serious physical injury or illness would occur.

(13) "Minor" means an individual seventeen (17) years of age or less.

(14) "Protection and advocacy system" means the agency designated by the governor of the state of Idaho to provide advocacy services for people with disabilities pursuant to 42 USC section 6042.

(15) "Respondent" means the individual subject to judicial proceedings authorized by the provisions of this chapter. [I.C., § 66-402, as added by 1982, ch. 59, § 7, p. 91; am. 1989, ch. 193, § 16, p. 475; am. 1999, ch. 293, § 1, p. 732; am. 2000, ch. 274, § 151, p. 799; am. 2006, ch. 284, § 1, p. 872.]

STATUTORY NOTES

Prior Laws. — Former § 66-402 was repealed. See Prior Laws, § 66-401.

Amendments. — The 2006 amendment, by ch. 284, in subsection (7), in the second sentence, deleted "with field training or experience in working with partially disabled or disabled persons" following "social worker," and added the language beginning "or such

other individual"; and in subsection (7), added the last sentence.

Federal References. — Section 6042 of title 42 of the United States Code, referred to in subsection (14), was repealed by Act of Oct. 30, 2000, P.L. 106-402. See 42 U.S.C.S. § 15043.

RESEARCH REFERENCES

A.L.R. — What constitutes reasonable accommodation under federal statutes protecting rights of disabled individual, as regards

educational program or school rules as applied to learning disabled student. 166 A.L.R. Fed. 503.

66-403. Court jurisdiction. — Judicial proceedings authorized by the provisions of this chapter shall be had in the district court of the county where the respondent resides or is found. [I.C., § 66-403, as added by 1982, ch. 59, § 7, p. 91.]

STATUTORY NOTES

Prior Laws. — Former § 66-403 was repealed. See Prior Laws, § 66-401.

66-404. Proceedings for appointment of guardians and conservators. — (1) A developmentally disabled person or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian and/or conservator.

(2) The petition shall:

(a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;

(b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate

information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;

(c) State the nature and scope of guardianship and/or conservatorship services sought; and

(d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings.

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. The report shall contain:

(a) A description of the nature and extent of the evaluation and the alleged impairments, if any;

(b) A description of the respondent's mental, emotional and physical condition; educational status; and adaptive and social skills;

(c) A description of the services, if any, needed by the respondent to meet essential requirements for physical health and safety, and/or manage financial resources;

(d) A recommendation regarding the type and extent of guardianship or conservatorship assistance, if any, required by the respondent and why no less restrictive alternative would be appropriate;

(e) An opinion regarding the probability that the extent of the respondent's disabilities may significantly lessen, and the type of services or treatment which may facilitate improvement in the respondent's behavior, condition, or skills;

(f) The respondent's preference, if any, regarding the person or persons to be appointed as guardian and/or conservator;

(g) The suitability of the person or persons proposed as guardian and/or conservator; and

(h) The signature of each member of the evaluation committee with a statement of concurrence or nonconcurrence with the findings and any dissenting opinions or other comments of the members.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than ten (10) days before the hearing on:

(a) The respondent;

(b) The respondent's spouse, parents and adult children, or if none, the respondent's closest relative, if any can be found; and

(c) Any person who is currently serving as guardian, conservator or who is providing care for the respondent.

Notice shall be served personally if the person to be served can be found within the state. If the person to be served cannot be found within the state, service shall be accomplished by registered mail to such person's last known address.

(5) The respondent is entitled to be present at the hearing in person, to present evidence, call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

(6) At the hearing the court shall:

(a) Determine whether the respondent is developmentally disabled;

- (b) Evaluate the respondent's ability to meet essential requirements for physical health or safety and manage financial resources;
- (c) Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interests to manage the respondent's financial resources and meet essential requirements for the respondent's physical health or safety;
- (d) Determine the nature and scope of guardianship or conservatorship services necessary to protect and promote the respondent's well-being; and
- (e) Evaluate the ability of the respondent or those legally responsible to pay the costs associated with the judicial proceedings and fix responsibility therefor. [I.C., § 66-404, as added by 1982, ch. 59, § 7, p. 91.]

STATUTORY NOTES

Prior Laws. — Former § 66-404 was repealed. See Prior Laws, § 66-401.

66-405. Order in protective proceedings. — (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(a)(1) through (4), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include:

- (a) A description of the respondent's current mental, physical and social condition;
- (b) The respondent's present address and living arrangement;
- (c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;
- (d) A description of services being provided the respondent;
- (e) A description of significant actions taken by the guardian or conservator during the reporting period;
- (f) Any significant problems relating to the guardianship or conservatorship;
- (g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and
- (h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically necessary treatment from the guardian, he shall provide the medically necessary treatment as authorized by section 39-4504(1)(g), Idaho Code.

(8) A guardian appointed under this chapter may consent to withholding or withdrawal of artificial life-sustaining procedures, only if the respondent:

- (a) Has an incurable injury, disease, illness or condition, certified by the respondent's attending physician and at least one (1) other physician to be terminal such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the respondent, and would only serve to prolong the moment of the respondent's death for a period of hours, days or weeks, and where both physicians certify that death is imminent, whether or not the life-sustaining procedures are used; or
- (b) Has been diagnosed by the respondent's attending physician and at least one (1) other physician as being in a persistent vegetative state which is irreversible and from which the respondent will never regain consciousness.

(9) Any person, who has information that medically necessary treatment of a respondent has been withheld or withdrawn, may report such informa-

tion to adult protective services or to the Idaho protection and advocacy system for people with developmental disabilities, who shall have the authority to investigate the report and in appropriate cases to seek a court order to ensure that medically necessary treatment is provided.

If adult protective services or the protection and advocacy system determines that withholding of medical treatment violates the provisions of this section, they may petition the court for an ex parte order to provide or continue the medical treatment in question. If the court finds, based on affidavits or other evidence, that there is probable cause to believe that the withholding of medical treatment in a particular case violates the provisions of this section, and that the life or health of the patient is endangered thereby, the court shall issue an ex parte order to continue or to provide the treatment until such time as the court can hear evidence from the parties involved. Petitions for court orders under this section shall be expedited by the courts and heard as soon as possible. No bond shall be required of a petitioner under this section.

(10) No partial or total guardian or partial or total conservator appointed under the provisions of this section may without specific approval of the court in a proceeding separate from that in which such guardian or conservator was appointed:

(a) Consent to medical or surgical treatment the effect of which permanently prohibits the conception of children by the respondent unless the treatment or procedures are necessary to protect the physical health of the respondent and would be prescribed for a person who is not developmentally disabled;

(b) Consent to experimental surgery, procedures or medications; or

(c) Delegate the powers granted by the order. [I.C., § 66-405, as added by 1982, ch. 59, § 7, p. 91; am. 1999, ch. 293, § 2, p. 732; am. 2005, ch. 120, § 8, p. 380; am. 2007, ch. 196, § 19, p. 579.]

STATUTORY NOTES

Prior Laws. — Former § 66-405 was repealed. See Prior Laws, § 66-401.

by ch. 196, updated the section reference in subsection (7).

Amendments. — The 2007 amendment,

66-406. Judicial procedure for commitment to director. —

(1) Proceedings for the involuntary care and treatment of developmentally disabled persons by the department may be commenced by the filing of a written application with a court of competent jurisdiction by a friend, relative, spouse or guardian of the respondent, or by a licensed physician, prosecuting attorney or other public official, or the head of the facility in which the respondent may be.

(2) The application shall state the name and last known address of the respondent; the name and address of either the respondent's spouse, guardian, next of kin or friend; whether the respondent can be cared for privately in the event commitment is not ordered; and a simple and precise statement of facts showing that the respondent is developmentally disabled and likely to injure himself or others.

(3) Any application shall be accompanied by a report of an evaluation committee stating that the committee has examined the respondent within the last fourteen (14) days and is of the opinion that the respondent is developmentally disabled and likely to injure himself or others; or a written statement by the committee that the respondent has refused to submit to examination.

(4) Upon receipt of an application for commitment not accompanied by an evaluation committee report, the court shall, within forty-eight (48) hours, order the respondent to submit to an examination. The evaluation committee shall report to the court its findings within three (3) working days of the order.

(5) If it is determined by the evaluation committee that the respondent is developmentally disabled and likely to injure himself or others pending the hearing, the court may issue an order authorizing a department employee, peace officer, or head of a facility to take the respondent to a facility in the community in which the respondent is residing or to the nearest facility to await the hearing and for good cause may authorize treatment during such period subject to the provisions of section 66-412 (4), Idaho Code.

(6) Upon receipt of the application and evaluation committee report, the court shall appoint a time and place for a hearing which shall be held not more than seven (7) days from receipt of the report and give written notice of the time and place of the hearing together with a copy of the application, evaluation committee report, and notice of the respondent's right to be represented by an attorney, or if indigent, to be represented by a court-appointed attorney, to the applicant, to the respondent, and to either the respondent's spouse, guardian, next of kin or friend, if other than the applicant. With the consent of the respondent and his attorney, the hearing may be held immediately. Upon motion for good cause shown and with the respondent's consent, the court may continue the hearing up to an additional fourteen (14) days.

(7) An opportunity to be represented by counsel shall be afforded to every respondent, and if neither the respondent nor others provide counsel, the court will appoint the counsel in accordance with chapter 8, title 19, Idaho Code.

(8) The hearing shall be held at a facility, at the respondent's home, or at any other suitable place not likely to have a harmful effect on the respondent's physical or mental health.

(9) In all proceedings under the provisions of this section, any existing provision of law prohibiting the disclosure of confidential communications between any member of the evaluation committee and the respondent shall not apply.

(10) The respondent, the applicant, and any other person to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The respondent shall be required to be present at the hearing free from drugs likely to impair the respondent's ability to communicate or understand the proceedings, unless the court determines that the mental or physical state of the respondent is such that his presence at the hearing free from drugs would

be detrimental to the respondent's health or would unduly disrupt the proceedings. A record of the proceedings shall be made as for other civil hearings. The hearing shall be conducted in an informal manner consistent with orderly procedure and rules of evidence.

(11) If, upon completion of the hearing and consideration of the record, the court finds by clear and convincing evidence that the respondent:

(a) Is developmentally disabled; and

(b) Because of such condition is likely to injure himself or others; and

(c) Lacks capacity to make informed decisions about treatment;

the court shall order the respondent committed to the custody of the director for an indeterminate period of time not to exceed three (3) years. The director or his designee shall determine within forty-eight (48) hours the least restrictive available placement consistent with the needs of each respondent committed under the provisions of this section and make arrangement for placement in that setting.

(12) Nothing in the provisions of this chapter or in any rules or regulations adopted pursuant hereto shall be construed to authorize the commitment of an individual who can be properly cared for privately with the help of willing and able family or friends.

(13) The order of commitment shall state the name and address of the respondent's attorney, and either the respondent's spouse, guardian, adult next of kin or friend, if any. [I.C., § 66-406, as added by 1982, ch. 59, § 7, p. 91.]

66-407. Change in disposition. — (1) Upon the recommendation of the head of a facility providing services to a respondent committed to the custody of the director under section 66-406, Idaho Code, the director or his designee may redetermine the least restrictive available facility for any such respondent. •

(2) Notice of any change in disposition shall be filed with the committing court, the respondent's attorney and either the respondent's spouse, guardian, adult next of kin or friend, if any.

(3) The respondent may appeal any change in disposition to a more restrictive level of care to the committing court or the court of the county in which such respondent is found within thirty (30) days of notice of the change in disposition. The court shall consider the treatment and need for protection of the respondent and may affirm or modify the change in disposition. [I.C., § 66-407, as added by 1982, ch. 59, § 7, p. 91.]

66-408. Petition for reexamination of order of guardianship or commitment. — All respondents admitted to a residential facility upon application of their parent or guardian or committed to the director shall be entitled to an annual review of their placement by an evaluation committee upon request therefor by the respondent, the respondent's guardian or attorney. In addition, all respondents committed pursuant to section 66-406, Idaho Code, or for whom an order for guardianship or conservatorship has been issued pursuant to section 66-405, Idaho Code, shall be entitled to a reexamination of the order for or conditions of their commitment, guardian-

ship or conservatorship on their own petition, or that of their legal guardian, parent, attorney or friend, to the district court of the county in which the order was issued or in which they are found. Upon receipt of the petition, the court shall determine whether the conditions justifying the order or its conditions continue to exist. Within three (3) years of the effective date [July 1, 1982] of this chapter, the department shall petition for the reexamination of all individuals committed prior to the effective date of this chapter as being mentally retarded or mentally deficient and whose commitments have not been terminated. [I.C., § 66-408, as added by 1982, ch. 59, § 7, p. 91.]

66-409. Authority to admit developmentally disabled persons. —

The head of any facility licensed under state law is authorized to admit for observation, diagnosis, care or treatment any developmentally disabled person for services provided by that facility. [I.C., § 66-409, as added by 1982, ch. 59, § 7, p. 91.]

66-410. Procedure upon application to a residential facility. —

Upon receipt of an application for admission to a residential facility, the head of such facility licensed under state law shall have the application reviewed or approved by an evaluation committee. The facility head may admit any developmentally disabled individual pending review by the evaluation committee for a period not to exceed thirty (30) days. The evaluation committee shall determine whether the individual is in need of observation, diagnosis, care or treatment at the facility, whether there are other facilities or services less restrictive of personal liberty available and interview and examine the individual for whom admission is sought. The evaluation committee must carefully probe the individual's background using all available sources including, but not limited to, parents, schools and other social agencies. If the head of the facility determines that the individual is not in need of observation, diagnosis, care or treatment at the facility, or determines that there are other facilities or services less restrictive of personal liberty available, the head of the facility shall, within three (3) days, discharge the individual. [I.C., § 66-410, as added by 1982, ch. 59, § 7, p. 91.]

66-411. Review and discharge. — (1) The head of each residential facility shall, following admission, examine or cause to be examined every resident, and determine whether to discharge each resident from the facility. A similar review shall be conducted annually thereafter. A report of each review and determination of every respondent committed to the director shall be sent to the committing court, respondent's attorney, and either the respondent's spouse, guardian, adult next of kin or friend, or if none, the respondent's resident representative.

(2) Whenever it is determined that the respondent is no longer developmentally disabled or likely to injure himself or others, the director or his designee shall terminate the commitment and make a report thereof to the court which issued the order. [I.C., § 66-411, as added by 1982, ch. 59, § 7, p. 91.]

66-412. Rights in facilities. — (1) Every developmentally disabled person admitted to any facility shall be entitled to humane care and treatment.

(2) A developmentally disabled person shall not be put in isolation. Mechanical restraints shall not be applied unless it is determined to be necessary for the safety of that person or the safety of others. Every use of a mechanical restraint, or time out for therapeutic purposes, and the reasons therefore [therefor], shall be made a part of the permanent record of the person under the signature of the facility head.

(3) Every developmentally disabled person has the following rights:

- (a) To be free from mental and physical abuse including that which arises from acts of negligence;
- (b) To reside in the environment or setting that is least restrictive of personal liberties in which appropriate treatment can be provided;
- (c) To communicate by sealed mail, telephone, or otherwise with persons inside or outside the facility, to have access to reasonable amounts of letter writing material and postage and to have access to private areas to make telephone calls and receive visitors;
- (d) To receive visitors at all reasonable times and to associate freely with persons of his own choice;
- (e) To wear his own clothes, keep and use his own personal possessions including toilet articles, keep and be allowed to spend a reasonable sum of his own money for personal expenses and small purchases, and have access to individual storage space for his own use;
- (f) To have free access to established procedures to voice grievances and to recommend changes in the policies and/or services being offered at the facility;
- (g) To practice his religion;
- (h) To be informed of his medical and habilitative condition, of services available in the facility and the charges therefor;
- (i) To have reasonable access to all records concerning himself; and
- (j) Unless limited by prior court order, to exercise all civil rights, including the right to dispose of property, except property described in subsection (e) of this section, execute instruments, make purchases, enter into contractual arrangements, and vote.

(4) Adult and emancipated minor developmentally disabled individuals or a parent or guardian with authority to consent to treatment with respect to the minor child or ward, shall have the right to refuse specific modes of treatment or habilitation. The head of a facility may deny the right to refuse treatment or habilitation only in cases of emergency or when a court has determined that an adult or emancipated minor lacks the capacity to make informed decisions about treatment and there is no guardian with authority to consent to treatment. A statement explaining the reasons for any such denial shall immediately be entered in the individual's permanent record and in the case of respondents committed under section 66-406, Idaho Code, copies of the statement shall be sent to the committing court, the respondent's attorney and either the respondent's spouse, guardian, adult next of kin or friend.

(5) A list of the rights contained in this section and section 66-413, Idaho Code, shall be prominently posted in all facilities and explained as far as possible to each developmentally disabled individual. [I.C., § 66-412, as added by 1982, ch. 59, § 7, p. 91.]

STATUTORY NOTES

Compiler's Notes. — The bracketed word "therefor" in subsection (2) was inserted by the compiler.

66-413. Individual treatment plan. — (1) The head of a facility shall establish or obtain for each developmentally disabled resident or client a current individual treatment plan. This plan shall be placed in the resident's or client's permanent file and shall describe:

- (a) The resident's or client's disabilities;
- (b) The goals of care and treatment at the facility;
- (c) The modes of care and treatment to be employed;
- (d) The location least restrictive of personal liberty in which appropriate services can be provided;
- (e) The written approval of the plan by the head of the facility or his designee;
- (f) Changes to the original plan;
- (g) A discharge plan including, if the resident or client has been committed to the director, a recommendation concerning legal status upon discharge; and
- (h) A statement by the head of the facility or his designee that the plan has been explained, as far as possible, to the resident or client and that a copy of the plan and of subsequent changes has been mailed to the last known address of the known parents, legal guardian or next of kin of the resident or client.

(2) Each facility shall take reasonable efforts to include the resident or client and parents of minor residents or clients, legal guardians of clients or residents who lack capacity to make informed decisions about treatment or the resident's or client's duly appointed resident representative in the development of the plan, and provide for a system by which the client or resident may secure an independent review of the treatment plan.

(3) If, in the judgment of the head of any facility, the client or resident is unable to manage financial resources, is unable to meet essential requirements for physical health or safety, or lacks capacity to make informed decisions, he shall encourage guardianship or conservatorship proceedings under the provisions of this chapter. [I.C., § 66-413, as added by 1982, ch. 59, § 7, p. 91.]

66-414. Developmentally disabled persons with assets sufficient to pay expenses — Liability of relatives. — (1) When a developmentally disabled person has been admitted to a state operated facility voluntarily or involuntarily, the director of the facility may cause an inquiry to be made as to the financial circumstances of that person and of the relatives of that

person as legally liable for his support, and if it is found that the person or his relatives are able to pay the charges for the care and treatment of the resident or client in the facility in whole or in part, it shall be the duty of the head of the facility to collect the expenses and charges and if necessary to institute in the name of the state a civil suit against the person or persons so liable.

(2) The respondent in judicial proceedings authorized by the provisions of this chapter in which a total or partial guardian, total or partial conservator or commitment has been appointed or ordered, or the applicant in such proceedings if no total or partial guardian, total or partial conservator or commitment is appointed or ordered shall be legally liable for the costs associated with such proceedings, including court appointed counsel and evaluation.

(3) The following relatives shall be bound by law to provide for the expenses and charges for judicial proceedings and for the care and treatment of such developmentally disabled persons: the husband for the wife, the wife for the husband and the parent for his or her minor child or children. [I.C., § 66-414, as added by 1982, ch. 59, § 7, p. 91.]

OPINIONS OF ATTORNEY GENERAL

The intent of a proposed waiver application for a demonstration project under 42 U.S.C. § 1315 is to create a demonstration project along the lines of this state's relative responsibility law as that law is contained in § 32-

1008A; if the application were carefully drafted to incorporate that precise intent, this section and §§ 32-901, 32-1002, 32-1003, 56-203A, 56-203B, 56-209b, would be irrelevant. OAG 85-10.

CHAPTER 5

STATE ASYLUM AND SANITARIUM FUND FOR PATIENTS

SECTION.

66-501. Creation of patients' trust fund.

66-502. Use of money in fund by patients.

SECTION.

66-503. Custody of money — Duty of superintendent or manager.

66-501. Creation of patients' trust fund. — There shall be established in the respective offices of the superintendents or managers of each state hospital and the Idaho state school and hospital, a fund to be known as the patients' trust fund. [1915, ch. 144, § 1, p. 316; reen. C.L., § 783b; C.S., § 1192; I.C.A., § 64-301; am. 1947, ch. 56, § 4, p. 74; am. 1967, ch. 357, § 2, p. 1004.]

STATUTORY NOTES

Cross References. — Interstate compact on mental health, § 66-1201.

66-502. Use of money in fund by patients. — Persons having money in the patient's trust fund may, with the consent of the superintendent or attending physician, or the superintendent or attending physician on behalf of any patient may, pursuant to rules and regulations of the board of health

and welfare, apply such funds for necessary, incidental expenses. [1915, ch. 144, § 2, p. 316; reen. C.L., § 783c; C.S., § 1193; I.C.A., § 64-302; am. 1947, ch. 56, § 5, p. 74; am. 1967, ch. 357, § 3, p. 1004; am. 1974, ch. 165, § 21, p. 1405.]

66-503. Custody of money — Duty of superintendent or manager.

— All moneys so held in trust shall be kept by the superintendent or manager, subject to be returned to the person or persons from whom any part of such fund has been taken for deposit in trust, except any portion thereof applied to such patient's expenses while in said state hospital or the Idaho state school and hospital or applied to the payment of the funeral expenses of said patient, upon his death, release or discharge from the said institution; provided, however, that if any patient who dies or has been discharged or escaped from any state hospital or Idaho state school and hospital does not present, personally or through his legal guardian, heirs or assigns, a claim against the said trust fund for repayment to him of money to his credit in said trust fund for patients within five (5) years from the date of his death, discharge or escape as certified to the state controller of the state of Idaho by the officer in charge of said institutions, said money shall escheat to the state of Idaho and shall be transferred to the general fund thereof by the state controller and the superintendent. [1915, ch. 144, § 3, p. 316; reen. C.L., § 783d; C.S., § 1194; I.C.A., § 64-303; am. 1941, ch. 57, § 1, p. 116; am. 1947, ch. 56, § 6, p. 74; am. 1967, ch. 357, § 4, p. 1004; am. 1994, ch. 180, § 162, p. 420.]

STATUTORY NOTES

Cross References. — Money found on insane person, § 66-352.

Effective Dates. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho

changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 162 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 6

DECLARATIONS FOR MENTAL HEALTH TREATMENT

SECTION.

66-601. Definitions.

66-602. Declarations for mental health treatment.

66-603. Designation of agent.

66-604. Signature — Witnesses.

66-605. Operation of declaration.

66-606. Powers of agent.

SECTION.

66-607. Withdrawal.

66-608. Limitations.

66-609. Actions contrary to declaration.

66-610. Relation to other statutes.

66-611. Limited immunity.

66-612. Penalty.

66-613. Form of declaration.

66-601. Definitions. — For the purposes of this chapter, the following definitions shall apply:

(1) "Agent" means an adult properly appointed to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative agent.

(2) “Attending physician” means the licensed physician who has primary responsibility for the care and treatment of the declarant.

(3) “Facility” means:

(a) A designated treatment facility, as defined in section 66-317, Idaho Code;

(b) A nursing home; or

(c) An assisted living home.

(4) “Incapable” means that, by order of a court in a guardianship proceeding under section 66-322, Idaho Code, or in the opinion of two (2) physicians that include a psychiatrist, or in the opinion of a physician and a professional mental health clinician, a person’s ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(5) “Mental health treatment” means electroconvulsive treatment, treatment with psychotropic medication or short-term admission to a treatment facility for a period not to exceed seventeen (17) days.

(6) “Mental illness” means a substantial disorder of thought, mood, perception, orientation or memory, which grossly impairs judgment, behavior, or capacity to recognize and adapt to reality.

(7) “Professional mental health clinician” means an individual who holds an earned master’s level or higher degree in social work from an accredited program; a registered nurse with an earned master’s degree or higher degree in nursing with a specialization in psychiatric or mental health nursing from an accredited program; an individual who holds an earned master’s level or higher degree in psychology from an accredited program; or an individual who holds an earned master’s level or higher degree in counseling, marriage and family therapy or other closely related degree. Additionally, professionals in each category must have at least two (2) years experience in a clinical mental health setting. [I.C., § 66-601, as added by 1998, ch. 81, § 1, p. 287; am. 2006, ch. 214, § 7, p. 645.]

STATUTORY NOTES

Prior Laws. — These former sections, which comprised S.L. 1911, ch. 41, §§ 1, 16, 17, 19, 22, 24-31, p. 86; reen. C.L. 49:1, 49:7, 49:8, 49:10, 49:13, 49:15-49:22; C.S., §§ 1201-1204, 1207, 1209-1216; 1927, ch. 118, § 1, p. 163; I.C.A., §§ 64-401 — 64-404, 64-406, 64-408 — 64-415, were repealed by S.L. 1951, ch. 273, § 9, p. 574.

Amendments. — The 2006 amendment, by ch. 214, updated the section reference in subsection (3)(a).

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-602. Declarations for mental health treatment. — (1) A competent adult may make a declaration of preferences or instructions regarding mental health treatment. The preferences or instructions may include consent to or refusal of mental health treatment. The declaration shall name an attorney-in-fact (agent) and an alternative agent whose authority continues in effect as long as the declaration appointing the agent is in effect or until the agent has withdrawn. If a declaration for mental health

treatment has been invoked and is in effect, the declaration remains effective until the principal is no longer incapable.

(2) A declaration for mental health treatment continues in effect until revoked. A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record. [I.C., § 66-602, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Compiler's Notes. — The word enclosed in parentheses so appeared in the law as enacted.

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-603. Designation of agent. — (1) A declaration may designate a competent adult to act as agent to make decisions about mental health treatment. An alternative agent may also be designated to act as agent if the original designee is unable or unwilling to act at any time.

(2) The following may not serve as agent:

(a) The attending physician, mental health service provider, or an employee of the physician or provider, who is not related to the principal by blood, marriage or adoption;

(b) An owner, operator or employee of a health care facility in which the principal is a patient or resident who is not related to the principal by blood, marriage or adoption.

(3) The designation of an agent under this section supersedes a previous designation of an agent regarding mental health treatment unless otherwise specifically provided in the declaration. [I.C., § 66-603, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-604. Signature — Witnesses. — (1) A declaration is effective only if it is signed by the principal and two (2) competent adult witnesses. The witnesses must attest that the principal is personally known to them, signed the declaration in their presence, appears to be of sound mind, and is not under duress, fraud or undue influence.

(2) The following may not serve as a witness to the signing of a declaration:

(a) The attending physician or mental health service provider or a relative of the physician or provider;

(b) An owner, operator, or relative of an owner or operator of a health care facility in which the principal is a patient or resident; or

(c) A person related to the principal by blood, marriage or adoption. [I.C., § 66-604, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-605. Operation of declaration. — (1) A declaration becomes operative when it is delivered to the principal's physician or mental health treatment provider and remains valid until revoked. The physician or provider shall act in accordance with an operative declaration when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

(2) Upon being presented with a declaration, a physician or other provider shall make the declaration a part of the principal's medical record if a physician-patient relationship has previously been established. If no physician-patient relationship has previously been established, nothing in this statute, or rules adopted pursuant thereto, may be read to require the establishment of physician-patient relationship in contradiction to the existing requirements of reasonable medical practice. When acting under authority of a declaration, a physician or provider shall comply with it to the fullest extent possible consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider may withdraw from providing treatment consistent with the exercise of independent medical judgment by promptly notifying the principal and the agent and documenting the notification in the principal's medical record. [I.C., § 66-605, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-606. Powers of agent. — (1) An agent who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the principal only when the principal is incapable. The decisions must be consistent with desires the principal has expressed in the declaration.

(2) Except to the extent the right is limited by the declaration or any federal law, an agent has the same right as the principal to receive information regarding the proposed mental health treatment and to receive, review and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.

(3) In exercising authority under the declaration, the agent has a duty to act consistently with the desires of the principal as expressed in the declaration. If the principal's desires are not expressed in the declaration and not otherwise known by the agent, the agent has a duty to act in what the agent in good faith believes to be the best interest of the principal.

(4) An agent is not subject to criminal prosecution, civil liability or professional disciplinary action for an action taken in good faith under a declaration for mental health treatment. The agent is not, as a result of acting in that capacity, personally liable for the cost of treatment provided to the principal. [I.C., § 66-606, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-607. Withdrawal. — An agent may withdraw by giving notice to the principal. If a principal is incapable, the agent may withdraw by giving notice to the attending physician or provider. The attending physician or provider shall note the withdrawal as part of the principal's medical record, and may continue treatment in accordance with the declaration to the extent such treatment is consistent with reasonable medical practice. A person who has withdrawn under the provision of this section may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal is capable or to the principal's health care provider if the principal is incapable. [I.C., § 66-607, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-608. Limitations. — A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a health care facility. [I.C., § 66-608, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-609. Actions contrary to declaration. — The physician or provider may subject the principal to mental health treatment in a manner contrary to the principal's wishes as expressed in a declaration for mental health treatment only:

(1) If the principal is committed to a treatment facility under section 66-329, Idaho Code; or

(2) In cases of emergency endangering life or health. [I.C., § 66-609, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-610. Relation to other statutes. — A declaration does not limit any authority provided in this chapter either to take a person into custody or to admit, retain or treat a person in a health care facility. [I.C., § 66-610, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-611. Limited immunity. — A physician or provider who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability or professional disciplinary action resulting from a subsequent finding of a declaration's invalidity. [I.C., § 66-611, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-612. Penalty. — It is a misdemeanor for a person to knowingly alter, forge, conceal or destroy a declaration, or the reinstatement or revocation of a declaration. In this section, "knowingly" has the meaning given in section 18-101 5., Idaho Code. [I.C., § 66-612, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

66-613. Form of declaration. — A declaration for mental health treatment shall contain the following language, or language that is substantially similar.

NOTICE TO PERSON MAKING A DECLARATION FOR MENTAL HEALTH TREATMENT. This is an important legal document. It creates a declaration for mental health treatment. Before signing this document, you should know these important facts:

(1) This document allows you to make decisions in advance about three (3) types of mental health treatment: psychotropic medication, electroconvulsive therapy, and short-term (up to seventeen (17) days) admission to a treatment facility. The instructions that you include in this declaration will be followed only if a court, two (2) physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are incapable of making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for the treatments.

(2) You may also appoint a person as your agent to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistent with your desires as stated in this document or, if your desires are not stated or otherwise made known to the agent, to act in a manner consistent with what the person in good faith believes to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your agent at any time.

(3) This document will continue in effect until revoked. You have the right to revoke this document in whole or in part at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THIS DECLARATION WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT, TWO (2) PHYSICIANS THAT INCLUDE A PSYCHIATRIST, OR A PHYSICIAN AND A PROFESSIONAL MENTAL HEALTH CLINICIAN.** A revocation is effective when it is communicated to your attending physician or other provider.

(4) If there is anything in this document that you do not understand, you should ask a lawyer to explain it to you. This declaration will not be valid unless it is signed by two (2) qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

[I.C., § 66-613, as added by 1998, ch. 81, § 1, p. 287.]

STATUTORY NOTES

Effective Dates. — Section 2 of S.L. 1998, ch. 81 provided this act shall be in full force and effect on and after July 1, 1999.

CHAPTER 7

COMMITMENT TO IDAHO STATE SCHOOL AND COLONY

SECTION.

66-701 — 66-716. [Repealed.]

66-701 — 66-716. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, 501 — 64-514; 1943, ch. 169, §§ 1-3, p. 357; which comprised S.L. 1911, ch. 41, §§ 32-45, 1947, ch. 56, § 2, p. 74, were repealed by S.L. p. 86; C.L. 49:23-49:36; C.S., §§ 1217-1230; 1951, ch. 290, § 40, p. 622. See § 66-329 et 1921, ch. 139, §§ 1-4, p. 324; I.C.A., §§ 64- seq.

CHAPTER 8

STERILIZATION LAW

SECTION.

66-801 — 66-812. [Repealed.]

66-801 — 66-812. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, §§ 1-3, p. 683; I.C.A., §§ 64-601 — 64-612; which comprised S.L. 1925, ch. 194, §§ 1-12, 1950 (E.S.), ch. 69, §§ 1, 2, p. 93, were repealed by S.L. 1972, ch. 21, § 1. p. 358; 1929, ch. 68, § 1, p. 97; 1929, ch. 285,

CHAPTER 9

IDAHO VETERANS' HOME

SECTION.

66-901. Establishment of homes.

66-902, 66-903. [Repealed.]

66-904. Inspection of homes.

66-905. [Repealed.]

SECTION.

66-906. Succession to property of deceased resident.

66-907. Admissions to and charges for residence at homes.

66-901. Establishment of homes. — On and after July 1, 2000, there shall be established in the division of veterans services in the department of self-governing agencies in this state homes for veterans which shall hereafter be known and designated as Idaho state veterans homes. Idaho state veterans homes shall be homes for veterans discharged under honorable conditions by the government of the United States and the spouses of veterans eligible for admission to an Idaho state veterans home. A "spouse" shall mean the current husband or wife of a veteran under a marriage recognized by title 32, Idaho Code, and, as allowed by admissions criteria established pursuant to section 66-907, Idaho Code, the widow or widower of a veteran under a marriage recognized by title 32, Idaho Code. Before a person is admitted to a home, that person shall be a bona fide resident of this state. [1893, p. 91, § 1; am. 1897, p. 7, § 1; reen. 1899, p. 190, § 1; am. 1905, p. 4, § 1; am. 1905, p. 414, § 1; am. 1907, p. 15, § 1; reen. R.C. & C.L.,

§ 792; C.S., § 1250; am. 1921, ch. 173, § 1, p. 368; am. 1925, ch. 55, § 1, p. 80; I.C.A., § 64-701; am. 1945, ch. 57, § 1, p. 73; am. 1963, ch. 118, § 1, p. 346; am. 1969, ch. 134, § 1, p. 417; am. 1974, ch. 23, § 177, p. 633; am. 1984, ch. 75, § 1, p. 139; am. 1990, ch. 56, § 6, p. 127; am. 1992, ch. 53, § 2, p. 157; am. 2000, ch. 59, § 5, p. 125; am. 2001, ch. 198, § 3, p. 676; am. 2006, ch. 50, § 1, p. 144.]

STATUTORY NOTES

Cross References. — Administration by division of veterans services, § 65-202.

Division of veterans services fund, § 66-1106.

Amendments. — The 2006 amendment, by ch. 50, rewrote the section which formerly read: "On and after July 1, 2000, there shall be established in the division of veterans services in the department of self-governing agencies in this state homes for veterans which shall hereafter be known and desig-

nated as Idaho state veterans homes, which institutions shall be homes for male and female veterans discharged under honorable conditions by the government of the United States; provided, that before a person is admitted to a home he shall be a bona fide resident of this state."

Effective Dates. — Section 4 of S.L. 1992, ch. 53 declared an emergency. Approved March 19, 1992.

JUDICIAL DECISIONS

Voting Rights.

The constitutional provision which provides that "for voting purposes, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while kept at an almshouse or other asylum at public expense" preserves the voting status of the

inmates of a soldiers' home at the time of their entry. *Powell v. Spackman*, 7 Idaho 692, 65 P. 503 (1901).

Cited in: *Fritchman v. Athey*, 36 Idaho 560, 211 P. 1080 (1922).

66-902, 66-903. Commandant — Physician and matron. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — These sections, which comprised S.L. 1897, p. 7, §§ 3, 4; reen. 1899, p. 190, §§ 5, 6; am. 1903, p. 219, §§ 1, 2; reen. R.C. & C.L., §§ 795, 796; C.S., §§ 1252, 1253; I.C.A., §§ 64-702, 64-703; am. 1955, ch. 165, § 2, p. 338; am. 1969, ch. 134, § 2, p. 417, were repealed by S.L. 1974, ch. 23, § 1, p. 633.

66-904. Inspection of homes. — The veterans homes shall be subject to inspection at any time by the governor or any officer of his staff designated by him for the purpose of making such inspection. [1893, p. 91, § 8; reen. 1899, p. 190, § 8; reen. R.C. & C.L., § 797; C.S., § 1254; I.C.A., § 64-704; am. 1969, ch. 134, § 3, p. 417; am. 1990, ch. 56, § 7, p. 127.]

66-905. Uniforms. [Repealed.]

STATUTORY NOTES

Compiler's Notes. — This section, which comprised S.L. 1893, p. 91, § 13; reen. 1899, p. 190, § 10; reen. R.C. & C.L., § 799; C.S., § 1256; I.C.A., § 64-705, was repealed by S.L. 1951, ch. 32, § 1, p. 43.

66-906. Succession to property of deceased resident. — Hereafter, the application of any person for membership in a veterans home of this state, and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the administrator of the division of veterans services in the department of self-governing agencies of the state of Idaho that on the death of said applicant, while a member of such home, leaving no heirs at law next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said division of veterans services in the department of self-governing agencies of the state of Idaho for the sole use and benefit of said home, the proceeds to be disposed of in such manner as may be ordered by the administrator of the division, and that all personal property of said applicant which, upon his death, while a member, shall at once pass to and vest in said administrator, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five (5) years after the death of such member. The administrator of the division of veterans services is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant, and as to contain the consent of the applicant to accept membership upon the conditions herein provided. [1911, ch. 135, p. 424; reen. C.L., § 799a; C.S., § 1257; I.C.A., § 64-706; am. 1969, ch. 134, § 4, p. 417; am. 1974, ch. 23, § 178, p. 633; am. 1990, ch. 56, § 8, p. 127; am. 2000, ch. 59, § 6, p. 125.]

66-907. Admissions to and charges for residence at homes. — The administrator of the division of veterans services in the department of self-governing agencies with the advice of the veterans affairs commission is hereby authorized and directed to establish appropriate admissions criteria for the homes and to establish charges for residence in those cases where residents have available resources for this purpose. [1963, ch. 288, § 1 [part], p. 636; am. 1974, ch. 23, § 179, p. 633; am. 1990, ch. 56, § 9, p. 127; am. 2000, ch. 59, § 7, p. 125.]

STATUTORY NOTES

Compiler's Notes. — As enacted, this section constituted one sentence of item 6 of an appropriation act which item appropriated \$400,000 for acquisition of a new site and construction of a veterans' home. Two other sentences in such item read: "The governor is hereby authorized and directed to acquire by donation or exchange a site located in close proximity to the Veterans' Facility Hospital located at Boise, Idaho, or other site, for the

new Soldiers' Home. When the new facility is constructed and in use the present site of the home is hereby declared surplus and will become the general property of the state of Idaho, to be held for later disposition by the legislature."

Effective Dates. — Section 182 of S.L. 1974, ch. 23 provided that the act would be in full force and effect on and after July 1, 1974.

CHAPTER 10

IDAHO TUBERCULOSIS HOSPITAL

SECTION.

- 66-1001. Establishment of tuberculosis hospital.
66-1002. Acceptance of funds authorized.
66-1003. Remodeling and equipment of hospital.
66-1004. Delegation of responsibility for hospitalization of patients.

SECTION.

- 66-1005. Provision for transfer of power.
66-1006. Separability.
66-1007. Transfer of powers and duties to department of public health [board of health and welfare].

66-1001. Establishment of tuberculosis hospital. — A hospital for the care and treatment of persons having tuberculosis shall be established, remodeled, and equipped by the state of Idaho upon certain property belonging to Gooding College of the Methodist Episcopal Church, situated near the City of Gooding, in Gooding County, state of Idaho, described as acreage tracts 26, 31, 32 and 37 South Gooding Acreage, containing approximately 40 acres of land, provided that said property together with the water rights appurtenant thereto and all building and appurtenances thereon be, within ninety (90) days after the enactment of this bill, donated to the state of Idaho free and clear of all mortgages and other incumbrances thereon. [1941, ch. 79, § 1, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The words "board of health and welfare" have been substituted for references to the "department of public welfare" throughout this chapter. The department of public welfare was replaced by the charitable institutions commission pursuant to S.L. 1946 (1st E.S.), ch. 26, § 9-A, as added by S.L. 1947, ch. 41, § 2, p. 46, which transferred the powers, duties and privileges conferred on the department of public welfare by title 64 of the Idaho Code Annotated (now title 66 of the Idaho Code) to the commission.

S.L. 1951, ch. 257, § 1, p. 555 (§ 66-1007) transferred the powers and duties vested by this chapter in the charitable institutions commission to the department of public health.

S.L. 1967, ch. 311, § 24, p. 870 provided that all references to the department of public health contained in the Idaho Code should be deemed to refer to the state board of health

and S.L. 1972, ch. 347, § 16, p. 1017 (§ 39-114) provided that wherever the words "board of health" appeared in the Idaho Code they should mean the board of environmental protection and health.

S.L. 1973, ch. 87, § 6, p. 137 (former § 67-2417) provided that wherever the words "board of environmental protection and health" appeared in the Idaho Code, they should mean the board of environmental and community services; however, § 67-2417 was repealed in 1974. In that same year, ch. 23, § 51 of the Session Laws amended § 39-107 so as to transfer all the powers, duties, rulemaking and hearing functions of the board of environmental and community services to the board of health and welfare. Section 55 of the same act amended § 39-114 to read that all references to the words "board of health" in the Idaho Code should mean the board of health and welfare.

66-1002. Acceptance of funds authorized. — For the purpose of making available additional funds for assisting in carrying out the provisions of this act the board of health and welfare of the state of Idaho is hereby authorized to accept for and on behalf of the state of Idaho from any department or agency, or other instrumentality of the United States Government, a grant or donation of money for the remodeling, equipment

and/or operation of said hospital, and to use the same for such remodeling, equipment and/or operation. [1941, ch. 79, § 2, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The words “this act” were substituted for “department of public health and welfare” by the compiler. See compiler's notes, §§ 66-1001 — 66-1006. § 66-1001.
The name “board of health and welfare”

66-1003. Remodeling and equipment of hospital. — As soon as practicable after the acquirement of the site and the title thereto, the board of health and welfare shall proceed with the remodeling and equipment of said hospital, procedure to be regulated by stipulations concerning construction of public buildings. [1941, ch. 79, § 3, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The name “board of health and welfare” was substituted for “department of public welfare” by the compiler. See compiler's notes, § 66-1001.

66-1004. Delegation of responsibility for hospitalization of patients. — The board of health and welfare, in addition to all other powers granted it by law, is hereby authorized, empowered and directed to assume responsibility for the direction, operation, and control of the hospitalization of tuberculosis patients in said hospital. [1941, ch. 79, § 4, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The name “board of health and welfare” was substituted for “division of public health, of the department of public welfare” by the compiler. See compiler's notes, § 66-1001.

66-1005. Provision for transfer of power. — In the event the functions now vesting in the division of public health, of the department of public welfare [board of health and welfare] shall hereinafter vest in or be transferred to any other office or department, the powers and duties of the division of public health [board] shall likewise vest in such office or department. [1941, ch. 79, § 5, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The functions, powers and duties of the division of public health of the department of public welfare, referred to herein, now reside in the board of health and welfare. See Compiler's Notes, § 66-1001.

66-1006. Separability. — The provisions of this act are hereby declared to be severable, and if any provisions of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of the act which can be given effect without the invalid provision or application. [1941, ch. 79, § 6, p. 148.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1941, ch. 79, which is compiled herein as §§ 66-1001 — 66-1006.

66-1007. Transfer of powers and duties to department of public health [board of health and welfare]. — All powers and duties vested by title 66, chapter 10, Idaho Code, in the charitable institutions commission over the Idaho Tuberculosis Hospital in Gooding County, Idaho, are hereby transferred to and vested in the department of public health [board of health and welfare] of the state of Idaho. [1951, ch. 257, § 1, p. 555.]

STATUTORY NOTES

Compiler's Notes. — The department of public health, referred to herein, has been replaced by the board of health and welfare. See Compiler's Notes, § 66-1001.

Effective Dates. — Section 2 of S.L. 1951, ch. 257 declared an emergency. Approved March 20, 1951.

CHAPTER 11

FUNDS OF CHARITABLE INSTITUTIONS

SECTION.

- 66-1101. Mental hospital permanent endowment fund.
- 66-1101A. Mental hospital earnings reserve fund.
- 66-1102. Mental hospital income fund.
- 66-1103. Charitable institutions permanent endowment fund.
- 66-1104. Charitable institutions earnings reserve fund.

SECTION.

- 66-1105. Charitable institutions income fund.
- 66-1106. Charitable institutions fund — Transfer of moneys to separate funds.
- 66-1107. Moneys credited or accruing to special funds — Exclusive use.
- 66-1108. School for the deaf and the blind fund.

66-1101. Mental hospital permanent endowment fund. — (1) There is established in the state treasury the mental hospital permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds from the sale of lands granted to the state of Idaho under the provisions of section 11 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, known at the time of admission as insane asylum lands, and lands granted in lieu thereof;
- (b) Proceeds of royalties from the extraction of minerals on mental hospital lands owned by the state;
- (c) Moneys allocated from the mental hospital earnings reserve fund.

(2) Provided however, that proceeds from the sale of mental hospital lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of beneficiaries of the mental hospital endowment. If the land sale

proceeds are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds shall be deposited into the mental hospital permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the mental hospital permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 66-1101, as added by 1998, ch. 256, § 50, p. 825.]

STATUTORY NOTES

Effective Dates. — S.L. 1998, ch. 256, § 63 provides: "This act [which, in part, added this chapter] shall be in full force and effect on and after July 1, 2000, provided the United States Congress has approved amendments to Section 5 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, regarding sale or lease of school lands; and the state board of canvassers has certified that amendments to Sections 3, 4, 8 and 11 of Article IX of the Constitution of the State of Idaho have been adopted at the general election of 1998 regarding funds related to the public school endowment, disposition of school lands, and investing of permanent endowment funds.

Following the successful occurrence of the foregoing events, the governor shall issue a proclamation declaring that the described events have occurred and the dates of the events, and this act shall be in full force and effect on and after the date described.

Upon enactment, the state controller shall transfer all fund balances from the improvement funds to the respective earnings reserve funds."

The contingencies noted above concerning the effective date of S.L. 1998, ch. 256 have been met. Therefore the effective date of that act, and thus §§ 66-1101 through 66-1105, Idaho Code, is July 1, 2000.

66-1101A. Mental hospital earnings reserve fund. — (1) There is established in the state treasury the mental hospital earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

- (a) Earnings of the mental hospital permanent endowment fund, created to receive moneys from the insane asylum endowment provided in section 11 of the Idaho Admission Bill, 26 Stat. L. 215, ch. 656;
- (b) Proceeds of the sale of timber growing upon mental hospital lands;
- (c) Proceeds of leases of mental hospital lands;
- (d) Proceeds of interest charged upon deferred payments on mental hospital lands or timber on those lands; and
- (e) All other proceeds received from the use of mental hospital endowment lands and not otherwise designated for deposit in the mental hospital permanent endowment fund.

(2) Moneys shall be distributed out of the mental hospital earnings reserve fund only to support the beneficiaries of the mental hospital endowment, including distributions by the state board of land commissioners to the mental hospital permanent endowment fund and the mental hospital income fund; provided, that funds shall not be appropriated by the legislature from the mental hospital earnings reserve fund except to pay for administrative costs incurred managing the assets of the mental hospital endowment including, but not limited to, real property and monetary assets. [I.C., § 66-1101A, as added by 1998, ch. 256, § 51, p. 825.]

66-1102. Mental hospital income fund. — There is established in the state treasury the mental hospital income fund. The fund shall consist of all

moneys distributed from the mental hospital earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the mental hospital income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the mental hospital endowment pursuant to legislative appropriation. [I.C., § 66-1102, as added by 1998, ch. 256, § 53, p. 825.]

66-1103. Charitable institutions permanent endowment fund. —

(1) There is established in the state treasury the charitable institutions permanent endowment fund. This fund is perpetually appropriated for the beneficiaries of the endowment. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund principal shall forever remain intact. The fund shall be a permanent fund and shall consist of the following:

- (a) Proceeds from the sale of lands granted to the state of Idaho for charitable, educational, penal and reformatory institutions by the Idaho Admission Bill, 26 Stat. L. 215, ch. 656, and lands granted in lieu thereof;
- (b) Proceeds of royalties from the extraction of minerals on charitable institutions endowment lands owned by the state;
- (c) Moneys allocated from the charitable institutions earnings reserve fund;

(2) Provided however, that proceeds from the sale of charitable institutions endowment lands may be first deposited into the land bank fund established in section 58-133, Idaho Code, to be used to acquire other lands within the state for the benefit of beneficiaries of the charitable institutions endowment. If the land sale proceeds are not used to acquire other lands in accordance with section 58-133, Idaho Code, the proceeds shall be deposited into the charitable institutions permanent endowment fund along with any earnings on the proceeds.

(3) Earnings from the investment of the charitable institutions permanent endowment fund shall be distributed according to the provisions of section 57-723A, Idaho Code. [I.C., § 66-1103, as added by 1998, ch. 256, § 55, p. 825.]

66-1104. Charitable institutions earnings reserve fund. —

(1) There is established in the state treasury the charitable institutions earnings reserve fund. The fund shall be managed and invested by the endowment fund investment board according to law and the policies established by the state board of land commissioners. The fund shall consist of the following:

- (a) Earnings of the charitable institutions permanent endowment fund;
- (b) Proceeds from the sale of timber growing upon charitable institutions endowment lands;
- (c) Proceeds of leases of charitable institutions endowment lands;
- (d) Proceeds of interest charged upon deferred payments on charitable institutions endowment lands or timber on those lands; and
- (e) All other proceeds received from the use of charitable institutions endowment lands and not otherwise designated for deposit in the charitable institutions permanent endowment fund.

(2) Moneys shall be distributed out of the charitable institutions earnings reserve fund only to support the beneficiaries of the charitable institutions endowment, including distributions by the state board of land commissioners to the charitable institutions permanent endowment fund and the charitable institutions income fund; provided, that funds shall not be appropriated by the legislature from the charitable institutions earnings reserve fund except to pay for administrative costs incurred managing the assets of the charitable institutions endowment including, but not limited to, real property and monetary assets. [I.C., § 66-1104, as added by 1998, ch. 256, § 57, p. 825.]

66-1105. Charitable institutions income fund. — There is established in the state treasury the charitable institutions income fund. The fund shall consist of all moneys distributed from the charitable institutions earnings reserve fund and from other sources as the legislature deems appropriate. Moneys in the charitable institutions income fund shall be used for the benefit of the beneficiaries of the endowment and distributed to current beneficiaries of the charitable institutions endowment pursuant to legislative appropriation. [I.C., § 66-1105, as added by 1998, ch. 256, § 59, p. 825.]

66-1106. Charitable institutions fund — Transfer of moneys to separate funds. — Any and all moneys hereafter accruing to said charitable institutions fund shall be forthwith transferred and credited to the following designated funds in the following proportions, respectively, to wit:

To the Idaho State University fund, four-fifteenths (4/15) thereof;

To the State Juvenile Corrections Institutions fund, four-fifteenths (4/15) thereof;

To the State Hospital North fund, four-fifteenths (4/15) thereof;

To the Division of Veterans Services fund, five-thirtieths (5/30) thereof;

To the School for the Deaf and Blind fund, one-thirtieth (1/30) thereof. [1929, ch. 184, § 4, p. 326; I.C.A., § 64-806; am. 1990, ch. 56, § 10, p. 127; am. 1995, ch. 44, § 57, p. 65; am. 2000, ch. 14, § 1, p. 30; am. 2005, ch. 336, § 1, p. 1053.]

STATUTORY NOTES

Compiler's Notes. — The words "Idaho State University" were substituted for "Southern Branch of the University of Idaho" on authority of S.L. 1947, ch. 107, § 2, p. 217, which provided that all references to the Southern Branch of the University of Idaho should be considered and construed as referring to Idaho State College, and S.L. 1963, ch. 12, § 11, p. 23, compiled as § 33-3011, which provided that wherever the name "Idaho

State College" or "Southern Branch of the University of Idaho" should appear in any statute, such statute was amended to read: "Idaho State University."

The name "State Hospital North" was substituted for "Northern Idaho Sanitarium" on the authority of S.L. 1931, ch. 98, § 2, p. 171. For present law so designating the hospital, see § 66-115.

66-1107. Moneys credited or accruing to special funds — Exclusive use. — All moneys heretofore properly credited to or accruing to any special fund heretofore created out of any portion of the expendable income

from the land grant of one hundred fifty thousand (150,000) acres aforesaid, for the support or maintenance of the Idaho State University, the State Juvenile Corrections Center, State Hospital North, Division of Veterans Services and the State School for the Deaf and the Blind, respectively, or any of such institutions, together with all funds hereafter accruing under this act to the funds designated in section 66-1106, Idaho Code, are hereby appropriated for the maintenance of said institutions, respectively, and no portion of said funds shall be diverted to any other purpose or transferred to any other fund: provided, that no provision hereof shall be so construed as to preclude the state controller from correcting errors in the apportionment of receipts or distribution of disbursements heretofore or hereafter erroneously credited or charged to any of such funds. [1929, ch. 184, § 5, p. 326; I.C.A., § 64-807; am. 1990, ch. 56, § 11, p. 127; am. 1994, ch. 180, § 164, p. 420; am. 1995, ch. 44, § 56, p. 65; am. 2005, ch. 336, § 2, p. 1053.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1929, ch. 184, which is compiled as §§ 66-1103 — 66-1108.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such

amendment was adopted, the amendment to this section by § 164 of S.L. 1994, ch. 180 became effective January 2, 1995.

Effective Dates. — Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4, and 58 — 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; section 65 provided that all the remaining sections of the act should be in full force and effect on and after October 1, 1995.

66-1108. School for the deaf and the blind fund. — Any and all funds heretofore accruing to the credit of the charitable institutions fund on the books of the state controller and state treasurer and not properly transferred or credited to funds known and designated as "The Academy of Idaho Fund," "The Idaho Technical Institute Fund" or "The Southern Branch of the University of Idaho Fund," "The Idaho Industrial Reform School Fund" or "The Idaho Industrial Training School Fund," "The Northern Idaho Insane Asylum Fund" or "The Northern Idaho Sanitarium Fund," "The Soldiers' Home Fund" and the "School for the Deaf and the Blind Fund" or the "Deaf and Blind School Fund," shall be transferred and credited to a special fund to be known as the "School for the Deaf and the Blind Fund." [1929, ch. 184, § 6, p. 326; I.C.A., § 64-808; am. 1994, ch. 180, § 165, p. 420.]

STATUTORY NOTES

Compiler's Notes. — Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to

state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 165 of S.L. 1994, ch. 180 became effective January 2, 1995.

CHAPTER 12

INTERSTATE COMPACT ON MENTAL HEALTH

SECTION.

66-1201. Enactment of compact.

66-1202. Compact administrator.

66-1203. Supplementary agreements.

SECTION.

66-1204. Finances.

66-1205. Transmission of copies of act.

66-1201. Enactment of compact. — The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, or convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving

state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, the state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a “compact administrator” who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the

constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1961, ch. 239, § 1, p. 385.]

66-1202. Compact administrator. — Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder. [1961, ch. 239, § 2, p. 385.]

66-1203. Supplementary agreements. — The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1961, ch. 239, § 3, p. 385.]

66-1204. Finances. — The compact administrator, subject to the approval of the board of examiners, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1961, ch. 239, § 4, p. 385.]

66-1205. Transmission of copies of act. — Duly authenticated copies of this act shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general and the secretary of state of the United States, and the Council of State Governments. [1961, ch. 239, § 5, p. 385.]

STATUTORY NOTES

Compiler's Notes. — The words "this act" refer to S.L. 1961, ch. 239, compiled as §§ 66-1201 — 66-1205.

CHAPTER 13

IDAHO SECURITY MEDICAL PROGRAM

SECTION.

- 66-1301. Program established.
- 66-1302. Administrator.
- 66-1303. Administrator's duties.
- 66-1304. Sources of residents.
- 66-1305. Dangerous and mentally ill persons defined.
- 66-1306. Final decision.
- 66-1307. Return of patient.
- 66-1308. Transportation of patients.
- 66-1309. Costs and charges.
- 66-1310. Civil rights of residents.

SECTION.

- 66-1311. Right to humane care and treatment.
- 66-1312. Standards for treatment.
- 66-1313. Mechanical restraints.
- 66-1314. Interstate contracts.
- 66-1315. Short title.
- 66-1316. Patients from other institutions.
- 66-1317. Review of involuntary treatment.
- 66-1318. Transfer to noncorrectional facilities.

66-1301. Program established. — The state board of correction shall establish, operate and maintain a program for persons displaying evidence of mental illness or psychosocial disorders and requiring diagnostic services and treatment in a maximum security setting, and for other criminal commitments as determined by the board of correction or its designee. The program shall be identifiably separate and apart from those functions and other programs maintained by the board for the ordinary prison population. [I.C., § 66-1301, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 36, p. 169; am. 2007, ch. 336, § 2, p. 985.]

STATUTORY NOTES

Cross References. — State board of corrections, § 20-201A.

Amendments. — The 2007 amendment, by ch. 336, throughout the section, substituted “program” for “institution”; and in the last sentence, substituted “and other pro-

grams” for “programs and facilities,” and deleted “but shall be located adjacent to the Idaho state correctional facility,, and shall be known as the Idaho security medical facility” from the end.

JUDICIAL DECISIONS

Cited in: State v. Reese, 98 Idaho 347, 563 P.2d 405 (1977); Flores v. Lodge, 101 Idaho 533, 617 P.2d 837 (1980).

66-1302. Administrator. — An administrator of the Idaho security medical program shall be appointed by the board of correction or its designee. The administrator shall be a reputable and qualified person experienced in the administration of programs for the care and treatment of persons afflicted with mental disorders and with such other qualifications as the board deems necessary. [I.C., § 66-1302, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 37, p. 169; am. 2007, ch. 336, § 3, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, substituted “Idaho security medical program” for “Idaho medical facility.”

66-1303. Administrator's duties. — The administrator shall:

(1) Perform all duties required by law and by the board of correction not inconsistent with this chapter.

(2) Maintain cognizance of and secure the professional care and treatment of each patient.

(3) Maintain a complete record on the condition of each patient.

(4) Retain custody of all patients in such manner as deemed necessary and in the best interest of the patients subject to the rules of the board of correction.

(5) Advise and consult with the director of the department of correction regarding the admissions and releases of patients to and from the program within any facility.

(6) To have care and custody over inmates assigned to the program under the provisions of section 66-1301, Idaho Code. [I.C., § 66-1303, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 38, p. 169; am. 2007, ch. 336, § 4, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, redesignated former subsections (a) through (f) as (1) through (6); in subsection (4), substituted "rules" for "regulations"; in

subsection (5), inserted "the department of" and "program within any"; and in subsection (6), substituted "program" for "facility."

66-1304. Sources of residents. — (1) Patients admitted to the program may originate from the following sources:

(a) Commitments by the courts as unfit to proceed pursuant to section 18-212, Idaho Code.

(b) Commitments by the courts of persons acquitted of a crime on the grounds of mental illness or defect pursuant to section 18-214, Idaho Code.

(c) Referrals by the courts for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of mental competency to stand trial.

(d) Mentally ill adult prisoners from city, county and state correctional institutions for diagnosis, evaluation or treatment.

(e) Commitments by the courts pursuant to section 66-329, Idaho Code.

(f) Criminal commitments of the Idaho department of correction requiring some form of specialized program not otherwise available.

(2) Residents coming to the program in the circumstances of subsection (1)(a), (b) and (e) of this section must first be found to be both dangerous and mentally ill, as defined in section 66-1305, Idaho Code, in judicial proceedings conducted in accordance with section 66-329, Idaho Code. [I.C., § 66-1304, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 39, p. 169; am. 2007, ch. 336, § 5, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, designated the formerly

undesignated introductory language and the last paragraph as subsections (1) and (2),

respectively, and therein substituted “program” for “facility,” and updated an internal reference.

Compiler’s Notes. — Section 18-214, referred to in paragraph (1)(b) of this section, was repealed. See § 18-207.

JUDICIAL DECISIONS

ANALYSIS

Commitment pursuant to § 66-329.
Direct commitment by court.

Commitment Pursuant to § 66-329.

If the court ultimately orders involuntary commitment of the proposed patient to the custody of the director of the department of health and welfare, the escape risk is one of the factors to be considered by the director in determining the facility in which the patient will be placed. Options available to the director include the Idaho security medical facility operated by the state board of correction un-

der this section, provided the patient meets the criteria of § 66-1305. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

Direct Commitment by Court.

This section makes no allowance for the direct commitment by a trial court of a person convicted of a crime. *State v. Reese*, 98 Idaho 347, 563 P.2d 405 (1977).

66-1305. Dangerous and mentally ill persons defined. — For purposes of this chapter persons found to be both dangerous and mentally ill shall mean persons found by a court of competent jurisdiction pursuant to any lawful proceeding:

- (1) To be in such mental condition that they are in need of supervision, evaluation, treatment and care; and
- (2) To present a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; and
- (3) To be dangerous to such a degree that a maximum security treatment setting is required. [I.C., § 66-1305, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 40, p. 169; am. 2007, ch. 336, § 6, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, redesignated former subsections (a) through (c) as (1) through (3); and in

subsection (3), substituted “setting” for “facility.”

JUDICIAL DECISIONS

Commitment Pursuant to § 66-329.

If the court ultimately orders involuntary commitment of the proposed patient to the custody of the director of the department of health and welfare, the escape risk is one of the factors to be considered by the director in determining the facility in which the patient

will be placed. Options available to the director include the Idaho security medical facility operated by the state board of correction under § 66-1304, provided the patient meets the criteria of this section. *State v. Hargis*, 126 Idaho 727, 889 P.2d 1117 (Ct. App. 1995).

66-1306. Final decision. — The final decision regarding the admission or discharge of patients to the program shall rest with the director of the department of correction, after consultation with the administrator. [I.C.,

§ 66-1306, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 7, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, inserted “to the program” and “the department of.”

JUDICIAL DECISIONS

Discretion of prison administration.

A trial court exceeded its authority by ordering a defendant’s placement in the state mental medical facility since the final discre-

tion for this decision rested with the administration of the prison. *State v. Reese*, 98 Idaho 347, 563 P.2d 405 (1977).

66-1307. Return of patient. — When a patient transferred under the program from any other correctional institution or admitted by order of any court no longer requires special treatment in the maximum security setting, the patient shall be returned to the source from which received. The correctional institution or court that referred the patient to the program shall retain constructive jurisdiction over the patient. [I.C., § 66-1307, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 8, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, substituted “When a patient transferred under the program” for “When a pa-

tient transferred to the facility” and “referred the patient to the program” for “referred the patient for hospitalization.”

66-1308. Transportation of patients. — When a patient is admitted to the program from a state institution or by order of any court, the expenses and responsibility for transportation of such patients from and to the facility where the patient will be admitted into the program shall be borne by the original institution or the county of the court ordering such admission. [I.C., § 66-1308, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 9, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, substituted “program” for “facility”

and inserted “where the patient will be admitted into the program.”

66-1309. Costs and charges. — The administrator shall seek recovery for expenses incurred in the evaluation, treatment and care of residents as follows:

(a) Extraordinary costs for evaluation, treatment and care of referees by the court for psychosocial diagnosis and recommendations as part of the pretrial or presentence procedure or determination of fitness to proceed shall be charged to the court referring such persons.

(b) Extraordinary costs for evaluation, treatment and care of mentally ill prisoners from county jails admitted for diagnosis shall be charged to the county so referring.

(c) Extraordinary costs for evaluation, treatment and care of commitments by the courts as unfit to proceed shall be the responsibility of the court so committing.

(d) Commitments by the courts after acquittal of a crime on the grounds of mental illness or defect shall be considered a responsibility of the department of correction.

(e) Transferees from other institutions under the jurisdiction of the department of correction shall be considered a responsibility of the department of correction.

(f) For purposes of this section, the term "extraordinary costs of evaluation, treatment and care" includes but is not limited to neurological evaluation, CAT scan, endocrine and/or metabolic evaluation, electro-convulsive therapy, surgery or medical treatment which requires the patient to be transferred to a hospital outside the facility, eyeglasses, and expert witness fees and expenses for court appearances; provided, however, the term does not include physical examination, psychiatric evaluation, psychological testing, obtaining social, medical and criminal histories, group and individual therapy, psychiatric treatment, medication, medical care which can be provided at the facility which is not elective or cosmetic, emergency dental treatment provided at the facility, and board, room and basic toiletries. [I.C., § 66-1309, as added by 1976, ch. 360, § 2, p. 1179; am. 1981, ch. 114, § 41, p. 169.]

STATUTORY NOTES

Legislative Intent. — Section 1 of S.L. 1981, ch. 114 read: "It is hereby declared by the legislature of the state of Idaho that its mentally disabled citizens are entitled to be diagnosed, cared for, and treated in as expedient a manner possible consistent with their legal rights, in a setting no more restrictive than their protection and the protection of society require, for a period no longer than reasonably necessary for diagnosis, care, treatment and protection, and to remain at

liberty or be cared for privately except when necessary for the protection of themselves or society."

Compiler's Notes. — Section 42 of S.L. 1981, ch. 114 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

66-1310. Civil rights of residents. — All patients received from any institution or facility under the jurisdiction of the department of health and welfare shall be accorded those civil rights provided by section 66-346, Idaho Code, with the exception of those aspects of the right to privacy which are inconsistent with the maintenance of a maximum security setting. [I.C., § 66-1310, as added by 1976, ch. 360, § 2, p. 1179.]

66-1311. Right to humane care and treatment. — Every patient shall be entitled to humane care and treatment. [I.C., § 66-1311, as added by 1976, ch. 360, § 2, p. 1179.]

JUDICIAL DECISIONS

Cited in: *Flores v. Lodge*, 101 Idaho 533, 617 P.2d 837 (1980).

66-1312. Standards for treatment. — The department of correction and the department of health and welfare shall jointly develop appropriate standards for treatment of patients committed under this program. It shall be the responsibility of the administrator of the program to implement those standards. [I.C., § 66-1312, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 10, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, in the first sentence, substituted “committed under this program” for “committed to this facility” and in the last sentence, substituted “program” for “facility.”

66-1313. Mechanical restraints. — Mechanical restraints shall not be applied to a patient unless it is determined that such is necessary for either his safety or the safety of other persons at the facility. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the patient under the signature of the administrator of the program, except that mechanical restraints may be used without such recording during transportation of residents from or to any facility. [I.C., § 66-1313, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 11, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, in the last sentence, substituted “program” for “facility” and “any facility” for “the facility.”

66-1314. Interstate contracts. — The administrator is authorized to enter into agreements, through the department of correction, with other states for diagnosis and treatment of persons from such states who are both dangerous and mentally ill, on the basis of patient exchange or per diem interstate billing of all costs and expenses. [I.C., § 66-1314, as added by 1976, ch. 360, § 2, p. 1179.]

66-1315. Short title. — This chapter may be referred to as and cited as the “Idaho Security Medical Program Act.” [I.C., § 66-1315, as added by 1976, ch. 360, § 2, p. 1179; am. 2007, ch. 336, § 12, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, substituted “Program” for “Facility.”

66-1316. Patients from other institutions. — The state board of correction shall be authorized to receive and admit patients of any institution or facility under the jurisdiction of the department of health and welfare, which patients have been determined by a court to be both dangerous and mentally ill as defined in section 66-1305, Idaho Code. The department of health and welfare shall in such cases, retain jurisdiction over the patients. [1976, ch. 360, § 3, p. 1179; am. 1977, ch. 121, § 1, p. 260; am. 1979, ch. 50, § 1, p. 140.]

66-1317. Review of involuntary treatment. — The state board of correction shall adopt procedures ensuring that treatment plans are developed for patients in the program for whom the court has authorized treatment, that the relative risks and benefits of specific modes of treatment contained in such plans are explained, to the extent possible, to each patient; that when treatment is given over the objection of a patient, there is a review of the decision to provide treatment independent of the treating professional and that a statement explaining the reasons for giving treatment over objection of the patient shall be entered in the patient's treatment record over the signature of the program administrator. [I.C., § 66-1317, as added by 1982, ch. 368, § 11, p. 919; am. 2007, ch. 336, § 13, p. 985.]

STATUTORY NOTES

Amendments. — The 2007 amendment, by ch. 336, near the beginning, substituted “patients in the program” for “patients at the facility,” and deleted “sentencing” preceding “court,” and at the end, substituted “program” for “facility.”

66-1318. Transfer to noncorrectional facilities. — Prisoners with a mental illness or defect committed to the board of correction may be transferred to facilities of the department of health and welfare in accordance with rules adopted pursuant to section 66-335, Idaho Code. [I.C., § 66-1318, as added by 1982, ch. 368, § 12, p. 919.]

STATUTORY NOTES

Effective Dates. — Section 14 of S.L. 1982, ch. 368 read: “This act shall be in full force and effect and shall apply to persons against whom a criminal complaint is filed on or after July 1, 1982.”

Index

A

ACCOUNTS AND ACCOUNTING.

Income tax.

Designation of deposits in trust account, §63-3067B.

Sunsetting designations, §63-3067C.

Property taxes, §63-812.

Taxation.

Multistate tax compact, §63-3709.

ACQUITTAL.

Mentally ill.

Persons acquitted of crime on grounds of mental illness or defect.

Commitment to security medical program, §66-1304.

ACTIONS.

Cigarette and tobacco products taxes.

Collection and enforcement of taxes.

Actions against state of Idaho, §63-2516.

Private actions for violations, §63-2527.

Drug stamp tax.

Exemption claims, §63-4211.

Fuels tax.

Doing business without license.

Civil action to enjoin, §63-2432.

Illegal drug stamp tax.

Exemption claims, §63-4211.

Income tax.

Actions against state of Idaho.

State tax commission made party defendant, §63-3074.

Collection of unpaid tax or deficiency, §63-3050.

Commencement of actions by state tax commission to collect taxes, interest, penalties, etc.

Other remedies preserved, §63-3064.

Liens.

Action to enforce lien, §63-3056.

License taxes.

Suits for recovery of license tax, §63-2307.

Plea of recovery in civil actions, §63-2308.

ACTIONS —Cont'd

Property taxes.

Unauthorized levy.

Setting aside, §63-809.

Taxation.

Collection of taxes.

Suits by attorney general on behalf of other states, §63-3409.

ADOPTION.

Expenses as income tax deduction, §63-3022I.

Income tax.

Deduction of expenses, §63-3022I.

ADVERTISING.

Sales tax.

Assumption or absorption of tax by retailer, §63-3619.

Separate display of tax and list price, §63-3619.

Tangible personal property.

Advertising space sold by publisher of newspaper or magazine exemption, §63-3616.

AERONAUTICS.

Fuels tax, §§63-2401 to 63-2444.

Aircraft engine fuel.

See FUELS TAX.

AGE.

Veterans.

G. I. bill of rights.

Males of or over eighteen years of age empowered to contract under bill of rights, §65-509.

AGED PERSONS.

Income tax.

Household deductions for dependents sixty-five years of age or older, §63-3022E.

Payment for dependents sixty-five years of age or older, §63-3025D.

Sales tax.

Senior citizen meals, §63-3622J.

AGENTS.

Mental health treatment.

Declarations for generally, §§66-601 to 66-613.

Property taxes.

Assessments.

Listing of property by agent, §63-306.

AGRICULTURE.**Income tax.**

Organizations exempt from tax imposed by act.

Farmer's association, §63-3025B.

Withholding.

State withholding tax basis for farmers, §63-3036.

Property taxes.

Exempt property.

Agricultural crops, §63-602R.

Fruits and vegetables held for human consumption, and seeds, shipped out of state, §63-602S.

Land actively devoted to agriculture, §63-604.

Speculative portion of value of agricultural land, §63-602K.

Sales tax.

Production exemption, §63-3622D.

Directly used or consumed in or during farming operation.

Defined, §63-3622D.

AIRCRAFT.

Fuels tax, §§63-2401 to 63-2444.

Sales tax.

Exemptions.

Transporting passengers or freight for hire, §63-3622GG.

AIR POLLUTION.**Property taxes.**

Exempt property.

Facilities for air pollution control, §63-602P.

ALCOHOLIC BEVERAGES.**Sales tax.**

Exempt sales.

Liquor sales exempted, §63-3622M.

Payment to liquor account, §63-3638A.

ALTERNATIVE DISPUTE RESOLUTION.

State tax commission, §63-118.

AMUSEMENT DEVICES.

Permits, §63-3623B.

Sales tax.

Defined, §63-3623B.

Permit fee in lieu of tax, §63-3623B.

ANATOMICAL GIFTS.**Income tax.**

Tax credit for live organ donation expenses, §63-3029K.

ANCHOR HOUSE.

Income tax credit for rehabilitation facilities, §63-3029C.

ANNUITIES.**Income tax.**

Information returns, §63-3037.

ANTICIPATION OF REVENUE.

Taxing districts, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

APPEALS.

Board of tax appeals, §§63-3801 to 63-3814.

See TAXATION.

Cigarette and tobacco products taxes.

Claims for refund, §63-2565.

Income tax.

Payment of tax or deficiency required, §63-3049.

Redeterminations by commission.

Review in district court, §63-3049.

Mentally ill.

Hospitalization of mentally ill.

Change in disposition, §63-342.

Property taxes.

Board of equalization.

Appeal from county board of equalization, §63-511.

Right of taxpayer to appeal, §63-501A.

Operating property assessments, §63-407.

State tax commission valuations, §63-409.

Tax deeds.

Appealing issuance of tax deed, §63-1006.

Sales tax refunds.

Appeal of tax commission decision denying claim for refund, §63-3626.

Taxation.

Board of tax appeals, §§63-101, 63-3801 to 63-3814.

See TAXATION.

Cigarette and tobacco products taxes.

Claims for refund, §63-2565.

Income tax.

Payment of tax or deficiency required, §63-3049.

APPEALS —Cont'd**Taxation —Cont'd**

Income tax —Cont'd

Redetermination by commission.

Review in district court,

§63-3049.

Sales tax.

Refunds.

Appeal of tax commission

decision denying claim,

§63-3626.

APPRAISALS AND APPRAISERS.**Forests and forestry.**

Taxation of forest lands and forest products.

Land parcels of less than five contiguous acres, §63-1702.

APPROPRIATIONS.**Memorials.**

Servicemen's memorials, §§65-102, 65-105.

ARBITRATION.**State tax commission.**

Alternative dispute resolution, §63-118.

ASSESSMENTS.**Illegal drug stamp tax.**

Jeopardy assessment, §63-4208.

Income tax.

Jeopardy assessments, §63-3065.

ASSETS.**Mentally ill.**

Hospitalization of mentally ill.

Liability of relatives, §66-354.

Mentally ill person with assets sufficient to pay expenses, §66-354.

ASSOCIATIONS.**Cooperative electrical associations.**

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE ELECTRICAL ASSOCIATIONS.

Cooperative natural gas associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE NATURAL GAS ASSOCIATIONS.

ASYLUMS.**Hospitalization of mentally ill,**

§§66-317 to 66-355.

See MENTALLY ILL.

ASYLUMS —Cont'd**State asylum and sanitarium fund****for patients,** §§66-501 to 66-503.

See MENTALLY ILL.

State hospitals, §§66-114 to 66-119.

See MENTALLY ILL.

ATTORNEY GENERAL.**Income tax.**

State tax commission.

Legal counselor and advisor of commission, §63-3066.

Property taxes.

Suits by attorney general, §63-1403.

Unauthorized levy.

Action to set aside, §63-809.

Taxation.

Collection of taxes.

Suits to collect taxes, §63-3408.

Multistate tax commission.

Nonvoting member, §63-3705.

Other states.

Suits by attorney general on behalf of other states for collection of taxes, §63-3409.

ATTORNEYS AT LAW.**Mentally ill.**

Hospitalization of mentally ill.

Involuntary commitment.

Representation by counsel, §66-329.

Rights of patients, §66-346.

ATTORNEYS' FEES.**Taxpayer bill of rights.**

Revenue officer violations, §63-4011.

ATTORNEYS-IN-FACT.**Declarations for mental health****treatment,** §§66-601 to 66-613.

See MENTALLY ILL.

AUCTIONS AND AUCTIONEERS.**License tax,** §63-2304.**AUDITS AND AUDITORS.****Sales tax.**

Commission to employ auditors to examine taxpayer's records and books, §63-3624.

Taxation.

Multistate tax compact.

Interstate audits, §63-3701.

AUTISM.**Treatment and care of****developmentally disabled,** §§66-401 to 66-414.

See DEVELOPMENTAL DISABILITIES.

B**BANKS AND FINANCIAL INSTITUTIONS.****Income tax.**

Federal land banks.

Organizations exempt from tax,
§63-3025B.

Taxation.

Credit unions.

Exemptions.

Shares and accounts, §63-602L.

BILL OF RIGHTS, TAXPAYERS,

§§63-4001 to 63-4011.

See TAXPAYERS' BILL OF RIGHTS.

BLIND AND VISUALLY IMPAIRED PERSONS.**Income tax.**

Persons exempt from tax, §63-3086.

BOARDS AND COMMISSIONS.**Appeals.**

Tax appeals, §§63-3801 to 63-3814.

See TAXATION.

Counties.

Memorials.

County memorial commission,
§65-101.

Illegal drug stamp tax.

Administration of tax, §63-4208.

Memorials.

County memorial commission,
§65-101.

Taxation.

Board of tax appeals, §§63-101,
63-3801 to 63-3814.

See TAXATION.

Veterans.

Veterans affairs commission,
§§65-201 to 65-207.

See VETERANS.

BONA FIDE PURCHASERS.**Sales tax.**

Liability of successors to business,
§63-3628.

BOND ISSUES.**Taxing districts.**

Revenue anticipation bonds.

Authority to issue, §63-3102.

Creation of fund to pay bonds at
maturity, §63-3104.

Levy to cover deficiencies in
payment, §63-3105.

Necessary actions authorized,
§63-3108.

Payment, §63-3104.

BOND ISSUES —Cont'd**Taxing districts —Cont'd**

Revenue anticipation bonds —Cont'd

Refunding bonds or notes.

Issuance and sale to pay for
revenue anticipation bonds
or notes, §63-3106.

Sale, §63-3103.

Tax levy to cover deficiency in bond
or note payments, §63-3105.

BONDS, SURETY.**Cigarette and tobacco products taxes.**

Transportation without stamps,
§63-2505.

Wholesalers, §63-2510A.

County auditor.

Property taxes.

Liability of auditor on official bond,
§63-1402.

Fuels tax.

Distributors, §63-2428.

Property taxes.

Liability of officials on bonds,
§63-1402.

BRACES.**Sales tax exemption of orthopedic appliances, §63-3622N.****BRIDGES.****Licenses.**

Toll bridges.

Bridge and ferry license, §63-2305.

BUDGETS.**Property taxes.**

Certification of budgets in dollars,
§63-803.

Copy of budget.

Filing, §63-804.

Maximum amount for consolidated
districts, §63-802.

Notice of budget meeting, §63-802A.

BUILDINGS.**Income tax.**

Alternative energy devices at
residence.

Deductions allowed, §63-3022C.

Existing buildings.

Defined, §63-3022B.

Insulation of residences.

Deduction for insulation,
§63-3022B.

Modular buildings.

Sales tax.

Definition, §63-3606A.

Sales tax.

Modular buildings.

Defined, §63-3606A.

BULLION.**Monetized bullion.**

Defined, §63-3622V.

Precious metal bullion.

Defined, §63-3622V.

Sales tax.

Exemptions, §63-3622V.

BURDEN OF PROOF.**Illegal drug stamp tax.**

Incorrectness or invalidity of taxes or penalties assessed, §63-4208.

Income tax.

Water's edge election, §63-3027D.

Property taxes.

Board of tax appeals, appeal from, §63-3812.

County board of equalization, appeal from, §63-511.

Equalization, board of.

Assessments, appeal of, §63-502.

Valuation, appeal of, §63-409.

BUSINESS INVENTORIES.

Exemption from property taxation, §63-602W.

C**CANAL COMPANIES.****Property taxes exemption.**

Operating property, §63-602N.

Sales tax.

Exemption of nonprofit organizations, §63-3622O.

Use tax.

Exemption of nonprofit organizations, §63-3621.

CANCELLATION OF TAXES.

Property taxes, §63-711.

CAPITAL GAINS.**Income tax.**

Corporations.

Computing taxable income, §§63-3027, 63-3027A.

Deduction, §63-3022H.

Sale of residence.

Computation of gross, §63-3030.

CARRIERS.**Fuels tax.**

Reports of importation by carriers, §63-2436.

Sales tax.

Exemptions.

Purchases shipped out-of-state by common carrier, §63-3622P.

CASUALTY LOSS PROPERTY TAX

EXEMPTION, §63-602X.

Cancellation of property taxes, §63-711.

CEMETERIES.

Idaho state veterans cemetery, §65-108.

Property tax exemption, §63-602F.

Veterans.

Idaho state veterans cemetery, §65-108.

Maintenance fund, §65-107.

CEREBRAL PALSY.**Treatment and care of**

developmentally disabled, §§66-401 to 66-414.

See DEVELOPMENTAL DISABILITIES.

CHARITABLE INSTITUTIONS.

See CHARITIES.

CHARITABLE INSTITUTIONS COMMISSION.

See CHARITIES.

CHARITABLE INSTITUTIONS EARNINGS RESERVE FUND, §66-1104.

CHARITABLE INSTITUTIONS FUNDS.

Charitable institutions earnings reserve fund, §66-1104.

Charitable institutions income fund, §66-1105.

Charitable institutions permanent endowment fund, §66-1103.

Money credited or accruing to special fund, §66-1107.

Payments from fund, §§66-1106, 66-1107.

School for the deaf and blind fund, §66-1108.

Separate funds, transfer of money to, §66-1106.

Support and maintenance of certain institutions, §66-1107.

Transfer of money to separate funds, §66-1106.

CHARITABLE INSTITUTIONS INCOME FUND, §66-1105.

CHARITABLE INSTITUTIONS PERMANENT ENDOWMENT FUNDS, §66-1103.

CHARITIES.**Board of health and welfare.**

- Idaho tuberculosis hospital.
- Transfer of powers and duties from charitable institutions commission to board, §66-1007.
- Powers and duties of charitable institutions commission transferred to board, §66-114.
- Property of charitable institutions commission transferred to board, §66-117.

Charitable institutions commission.

- Idaho tuberculosis hospital.
- Transfer of powers from commission to department of public health to board of health and welfare, §66-1007.
- Powers and duties.
- Transfer to board of health and welfare, §66-114.
- Property.
- Transfer to board of health and welfare, §66-117.

Income tax.

- Credit for charitable contributions, §63-3029A.
- Rehabilitation facilities, §63-3029C.

Property.

- Charitable institutions commission.
- Transfer of property to board of health and welfare, §66-117.

Property tax exemption, §63-602C.**State hospitals.**

- General provisions, §§66-114 to 66-119.

State of Idaho.

- Mentally ill.
- State hospitals, §§66-114 to 66-119.

Tuberculosis.

- Idaho tuberculosis hospital, §§66-1001 to 66-1007.
- See TUBERCULOSIS.

Veterans' home.

- Generally, §§66-901 to 66-907.
- See VETERANS.

CHECKOFFS.**Income tax refund designation or donation, §§63-3067A to 63-3067C.**

- Election campaign fund, §63-3088.

CHILDREN'S HOME SOCIETY OF IDAHO, INC.**Income tax credit for rehabilitation facilities, §63-3029C.****CHURCHES.****Sales tax.**

- Church meals exempted, §63-3622J.
- Religious literature exempted, §63-3622I.

Taxation.

- Property exempt from taxation.
- Sales tax, §§63-3622I, 63-3622J.

CIGARETTE AND TOBACCO**PRODUCTS TAXES, §§63-2501 to 63-2565.****Actions.**

- Collection and enforcement of taxes.
- Actions against state of Idaho, §63-2516.
- Private actions for violations, §63-2527.

Additional tax.

- Imposition and rate, §63-2522.

Appeals.

- Claims for refund, §63-2565.

Applicability of additions and penalties, §63-2562.**Applicability of chapter.**

- Exceptions, §63-2529.

Bonds, surety.

- Transportation without stamps, §63-2505.
- Wholesalers, §63-2510A.

Books and records.

- Entry and inspection by commission, §63-2555.
- Preservation, §63-2555.

Businesses.

- Defined, §63-2551.

Cigarettes.

- Defined, §63-2502.

Citation of act, §63-2561.**Collection, §63-2552.**

- Applicability of income tax collection procedure, §63-2563.
- Distribution of tax revenues collected, §63-2564.
- State tax commission to collect tax, §§63-2506, 63-2516.

Compensation for affixing stamps, §63-2509.**Compromise and confiscation, §63-2515.****Contraband articles, §63-2513.**

- Compromise and confiscation, §63-2515.

Credit.

- Overpayments, §63-2521.
- When credit may be obtained for tax paid, §63-2559.

CIGARETTE AND TOBACCO PRODUCTS TAXES —Cont'd

Credit —Cont'd

Wholesalers.

Cigarettes unmarketable and
returned to manufacturer,
§63-2510.

Damages.

Private actions for violations,
§63-2527.

Deficiencies.

Distribution of moneys collected,
§63-2520.

Jurisdiction over nonresidents,
§63-2517.

Definitions, §§63-2502, 63-2528, 63-2551.

Distribution of tax revenues, §§63-2520, 63-2564.

Distributors.

Additional tax, §63-2552A.

Defined, §63-2551.

Permits, §63-2554.

Enforcement of act, §63-2516.

Fees.

Permits.

Wholesalers, §63-2503.

Felonies.

Forging or counterfeiting stamps,
§63-2512.

Floor stocks tax.

Imposition, §63-2552.

Forfeitures.

Cigarettes in violation of act,
§63-2526.

Forgery and counterfeiting.

Penalty for violation, §63-2512.

Importation.

Qualification of persons importing
cigarettes as wholesalers,
§63-2508.

Imposition of stamps, §§63-2506, 63-2552.

Income tax.

Applicability of additions, penalties
and requirements provided by
income tax act, §63-2562.

Applicability of collection and
enforcement procedure,
§63-2563.

Injunctions.

Engaging in business without license
or permit, §63-2519.

Private actions for violations,
§63-2527.

Interest.

Credits or refunds, §§63-2521,
63-2565.

CIGARETTE AND TOBACCO PRODUCTS TAXES —Cont'd

Interest —Cont'd

Distribution of moneys collected,
§63-2520.

Distribution of revenue collected,
§63-2564.

Invoices.

Invoice of purchases procured by
retailers and subjobbers,
§63-2557.

Preservation of sales invoices,
§63-2556.

Jurisdiction.

Nonresidents, §63-2517.

Legislative purpose, §63-2501.

Taxes levied on tobacco products,
§63-2553.

Manufacturers.

Defined, §63-2551.

Misdemeanors.

Violations of provisions, §63-2512.

Motor vehicles.

Authority to search, §63-2514.

Contraband articles.

Seizure of vehicle, §63-2513.

Nonresidents.

Jurisdiction, §63-2517.

Notice.

Sales of contraband articles,
§63-2513.

Package of cigarettes.

Defined, §63-2502.

Prohibited acts as to, §63-2523.

Stamps affixed to individual
packages, §63-2507.

Parties.

Actions against state of Idaho.

State tax commission may be made
party defendant, §63-2516.

Payment, §63-2510.

Overpayment, §63-2565.

Tax payable monthly, §63-2560.

When credit may be obtained for tax
paid, §63-2559.

Penalties.

Civil penalties, §63-2503.

Distribution of penalties collected,
§§63-2520, 63-2564.

Violations of act, §63-2512.

Additional nature of penalties,
§63-2529.

Administrative sanctions,
§63-2526.

Criminal penalties, §63-2525.

Permits.

Failure to possess valid permit.

Penalty, §63-2512.

CIGARETTE AND TOBACCO PRODUCTS TAXES —Cont'd

Permits —Cont'd

Required, §63-2554.

Retailers.

Seller's permit.

Required, §63-2503.

Revocation or suspension, §63-2503.

Wholesalers, §63-2503.

Applications, §63-2503.

Fees, §63-2503.

Importation of cigarettes.

Permit required, §63-2508.

Injunctions.

Engaging in business without
permit or license, §63-2519.

Qualifications, §63-2504.

Place of business.

Defined, §63-2551.

Purpose of act, §§63-2501, 63-2553.

Rate of tax, §63-2506.

Additional tax, §§63-2522, 63-2552A.

Records.

Inspections, §63-2511.

Required, §§63-2511, 63-2555.

Shipments and deliveries from public
warehouse of first destination,
§63-2558.

Refunds, §63-2565.

Appeals of decisions denying claims
for refund, §63-2565.

Overpayments, §63-2521.

Retailers.

Defined, §§63-2502, 63-2551.

Permits.

Sellers permit.

Required, §63-2503.

Retail outlets.

Defined, §63-2551.

Returns, §63-2560.

Filing with tax commission,
§63-2510.

Monthly estimate and quarterly
returns, §63-2560.

Stamps.

Requirements, §63-2510.

Sales.

Contraband article, §63-2513.

Defined, §63-2551.

Preservation of invoices, §63-2556.

Searches and seizures.

Authority of state tax commission,
§63-2514.

Contraband articles.

Seizure by state tax commission,
§63-2513.

Return of property confiscated,
§63-2515.

CIGARETTE AND TOBACCO PRODUCTS TAXES —Cont'd

Searches and seizures —Cont'd

Unlawful seizures.

State tax commission made party
defendant, §63-2516.

Stamps.

Affixed to individual packages,
§63-2507.

Bonds, surety.

Transportation of cigarettes
without stamps, §63-2505.

Compensation for affixing, §63-2509.

Forgery or counterfeiting, §63-2512.

Lost, destroyed or otherwise
unaccounted for.

Liability of wholesalers, §63-2510.

Persons first receiving cigarettes in
state to affix stamps, §63-2508.

Possession of more than ten packages
without stamps, §63-2512.

Printing, §63-2507.

Prohibited acts as to, §63-2523.

Returns.

Requirements, §63-2510.

Transportation of cigarette, §63-2505.

Unstamped cigarettes.

Contraband articles, §63-2513.

Wholesalers.

Lost, destroyed or otherwise
unaccounted for stamps.

Amount of tax liable for,
§63-2510.

State tax commission.

Administration of provisions,
§63-2527.

Administrative sanctions for
violations.

Imposition, §63-2526.

Collection of tax, §63-2506.

Returns.

Filing with commission, §63-2510.

Searches and seizures.

Authority of commission, §63-2514.

Contraband articles, §63-2513.

Subjobbers.

Defined, §63-2551.

Invoices of purchases to be procured
by subjobbers, §63-2557.

Permits, §63-2554.

Title of act.

Tobacco products act, §63-2561.

Tobacco products.

Defined, §63-2551.

Imposition of tobacco products tax,
§63-2552.

CIGARETTE AND TOBACCO**PRODUCTS TAXES —Cont'd****Transportation of cigarettes.**

Official stamp required, §63-2505.

Violations.

Penalties, §63-2512.

Additional nature of penalties,
§63-2529.

Administrative sanctions,
§63-2526.

Criminal penalties, §63-2525.

Private actions for violations,
§63-2527.

Prohibited acts, §63-2523.

Warehouses.

Records of shipments and deliveries
from public warehouse of first
destination, §63-2558.

Wholesalers.

Bonds, surety, §63-2510A.

Compensation for affixing stamps,
§63-2509.

Credit.

Cigarettes unmarketable and
returned to manufacturer,
§63-2510.

Defined, §63-2502.

Injunctions.

Engaging in business without
permit or license, §63-2519.

Payment of tax by wholesalers,
§63-2506.

Penalties for violation, §63-2512.

Permits, §63-2503.

Applications, §63-2503.

Fees, §63-2503.

Importation of cigarettes.

Permit required, §63-2508.

Injunctions.

Engaging in business without
permit or license, §63-2519.

Qualifications, §63-2504.

Records, §63-2511.

Stamps.

Lost, destroyed or otherwise
unaccounted for stamps.
Amount of tax liable for,
§63-2510.

Wholesale sales.

Defined, §63-2502.

Wholesale sales prices.

Defined, §63-2551.

CIGARETTES.

Defined, §63-2502.

Taxation.

Cigarette and tobacco products taxes,
§§63-2501 to 63-2565.

See CIGARETTE AND TOBACCO
PRODUCTS TAXES.

CIVIL RIGHTS.**Mentally ill.**

Hospitalization of mentally ill.

Exercise of civil rights, §66-346.

Security medical program.

Rights of patients, §66-1310.

Right to humane care and
treatment, §66-1311.

CLASS ACTIONS.**Taxpayers' bill of rights.**

Revenue officer violations,
§63-4011.

CLOTHING.

Property tax exemption, §63-602I.

COIN OPERATED DEVICES.**Sales tax.**

Exempted sales, §63-3622L.

COLLECTION AGENCIES.**Tax commission.**

Use of agency to collect assessments,
§63-119.

COLOSTOMY SUPPLIES.

Sales tax exemption, §63-3622N.

**COMMEMORATIVE SILVER
MEDALLIONS.**

Sales tax exemption, §63-3622PP.

COMMITMENT.**Developmental disabilities.**

Treatment and care.

Involuntary commitment and
treatment, §66-406.

Judicial procedure for commitment
to director, §66-406.

Change in disposition, §66-407.

Hearings, §66-406.

Order in protective proceedings,
§66-405.

Petition for reexamination for
order of commitment,
§66-408.

Mentally ill.

Hospitalization of mentally ill,
§§66-317 to 66-355.

See MENTALLY ILL.

Security medical program, §§66-1301
to 66-1318.

See MENTALLY ILL.

COMPACTS.

Mental health, §§66-1201 to 66-1205.

See MENTALLY ILL.

Multistate tax compact, §§63-3701 to
63-3709.

See TAXATION.

COMPACTS —Cont'd**Taxation.**

Multistate tax compact, §§63-3701 to 63-3709.

COMPROMISE AND SETTLEMENT.**Income tax.**

Adjusted or compromised cases.
Closing agreements, §63-3048.
Authority of commission to
compromise penalties, §63-3047.

COMPUTERS.**Income tax.**

Technological equipment.
Deduction for value of, §63-3022J.

Property taxes.

Exemption of custom computer
programs.
Intangible personal property
exemption, §63-602L.

Sales tax.

Software.
Included in definition of tangible
personal property, §63-3616.
Software included in definition of
tangible personal property,
§63-3616.

Taxation.

Electronic funds transfers, §63-115.
Electronic returns and documents,
§63-115.

Income tax.

Technological equipment.
Deduction for value of,
§63-3022J.

Property taxes.

Exemption of custom computer
programs.
Intangible personal property
exemption, §63-602L.

CONFIDENTIALITY OF INFORMATION.**Illegal drug stamp tax.**

Stamp purchases and
redetermination, §63-4206.

Income tax.

Divulging confidential information,
§63-3076.
Information furnished certain
officials, §63-3077.

Mentally ill.

Hospitalization of mentally ill.
Disclosure of information, §66-348.

CONFISCATION.**Cigarette and tobacco products taxes.**

Contraband articles, §63-2515.

CONFLICT OF LAWS.**Veterans.**

Conflicts with federal laws or
regulations.
Applicability of act, §65-507.

CONFLICTS OF INTEREST.**Mentally ill.**

State hospitals.
Board of health and welfare.
Pecuniary interest in contracts
forbidden, §66-119.

CONSERVATORS.**Disabled persons.**

Treatment and care of
developmentally disabled.
Appointment of conservators,
§66-404.
Notice, §66-404.

CONSTABLES.**Income tax.**

Distrain.
Production of books, §63-3062.
Levy or distraint warrant, §63-3059.
Proceedings on levy or distraint,
§63-3060.

CONSTRUCTION AND INTERPRETATION.**Electric power.**

License tax on electricity.
Separability of provisions,
§63-2711.

Income tax.

Franchise taxes.
Act not construed to repeal,
§63-3079.
Taxable income not construed to be
property, §63-3080.

Mentally ill.

Hospitalization of mentally ill.
Terms "residence," "residing," or
"resides," §66-325.

Taxing districts.

Anticipation of revenue.
Construction of act, §63-3107.

Veterans.

Veterans affairs commission.
Construction with other laws,
§65-207.

CONTEMPT.**Income tax.**

Refusal to comply with subpoenas or
orders under act, §63-3043.

CONTRABAND.**Cigarette and tobacco products taxes.**

Contraband articles, §63-2513.

CONTRACTORS.**Sales tax.**

Sales of tangible personal property to contractors.

Purchasing property for resale to United States.

Applicability of tax imposed, §63-3619.

CONTRACTS.**Mentally ill.**

Security medical program.

Interstate contracts, §66-1314.

State hospitals.

Board of health and welfare.

Pecuniary interest in contracts forbidden, §66-119.

Public works.

Contractors.

Taxation.

Payment of taxes prerequisite for public contract, §63-1503.

Sales tax.

Entered into before effective date of increased tax, §63-3640.

Out-of-state contracts.

Exemptions, §63-3622B.

Veterans.

Males eighteen years of age or over empowered to contract under G.I. bill of rights, §65-509.

CONTROLLED SUBSTANCES.**Illegal drug stamp tax, §§63-4201 to 63-4211.**

See **ILLEGAL DRUG STAMP TAX.**

Marijuana.

Illegal drug stamp tax.

General provisions, §§63-4201 to 63-4211.

Taxation.

Illegal drug stamp tax, §§63-4201 to 63-4211.

CONVEYANCES.**Property taxes.**

Tax deeds.

Effect of deed as conveyance, §63-1009.

CONVICTS.**Mentally ill.**

Commitment of mentally ill convicts, §66-335.

COOPERATIVE ELECTRICAL

ASSOCIATIONS, §§63-3501 to 63-3506.

Allotment and apportionment of tax by state tax commission, §63-3503.

Gross wind energy earnings, §63-3503B.

Collection.

Duty of county treasurers, §63-3504.

Cost of power.

Defined, §63-3501.

County assessors.

Assessment of nonoperating property, §63-3506.

County treasurers.

Duty to collect tax, §63-3504.

Gross earnings tax.

Collection by county treasurer, §63-3504.

Definitions.

Gross earnings tax, §63-3501.

Delinquent taxes.

Interest, §63-3504.

Lien on property until paid, §63-3505.

Penalty, §63-3504.

Gross electrical earnings.

Defined, §63-3501.

Gross wind energy earnings.

Allotment and apportionment of tax due, §63-3503B.

Defined, §63-3501.

Levy of tax on, §63-3502B.

Statements by producers, §63-3503B.

Interest.

Delinquent taxes, §63-3504.

Gross earnings tax.

Delinquent payments, §63-3504.

Levy of tax on annual gross earnings, §63-3502.**Levy of tax on gross wind energy earnings, §63-3502.****Liens.**

Gross earnings tax.

Taxes constitute lien on property until paid, §63-3505.

Taxes constitute lien on property until paid, §63-3505.

Nonoperating property.

Assessment by assessor, §63-3506.

Defined, §63-3501.

Operating property.

Defined, §63-3501.

Tax to be in lieu of all other taxes on operating property, §63-3502.

COOPERATIVE ELECTRICAL ASSOCIATIONS —Cont'd

Operators' statement.

Filing, §63-3503.

Gross wind energy earnings,
§63-3503B.

Penalties.

Gross earnings tax.

Delinquent payment, §63-3504.

Rate.

Levy of tax on annual gross earnings,
§63-3502.

Levy of tax on gross wind energy
earnings, §63-3502.

State tax commission.

Allotment and apportionment of tax,
§63-3503.

Gross wind energy earnings,
§63-3503B.

Taxing units.

Defined, §63-3501.

Tax in lieu of all other taxes on operating property, §63-3502.

Tax levies.

Defined, §63-3501.

Weighted wire mileage factor.

Defined, §63-3501.

WPPSS 4 and 5 costs.

Defined, §63-3501.

COOPERATIVE NATURAL GAS ASSOCIATIONS, §§63-3501 to 63-3506.

Allotment and apportionment of tax due, §63-3503A.

Assessment of nonoperating property, §63-3506.

Collection by county treasurer, §63-3504.

Cost of gas.

Defined, §63-3501.

Definitions, §63-3501.

Filing operator's statement, §63-3503A.

Gas line mileage factor.

Defined, §63-3501.

Gross natural gas earnings.

Defined, §63-3501.

Levy of tax on gross earnings, §63-3502A.

Lien of tax on property until paid, §63-3505.

Nonoperating property.

Defined, §63-3501.

Operating property.

Defined, §63-3501.

COOPERATIVE NATURAL GAS ASSOCIATIONS —Cont'd

Penalty and interest imposed when delinquent, §63-3504.

Tax in lieu of all other taxes, §63-3502A.

COPIES.

Mentally ill.

Interstate compact on mental health.

Transmission of copies of act,
§66-1205.

Veterans.

Discharge papers.

Issuance without fee, §65-301.

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Income tax.

Corporations.

Computing taxable income,
§63-3027.

Property taxes.

Exemption of intangible personal
property, §63-602L.

CORPORATE HEADQUARTERS INCENTIVE ACT, §§63-2901 to 63-2910.

Administration of provisions, §63-2910.

Definitions, §63-2902.

Income tax credits.

Capital investment, §63-2903.

Limitations, rules and regulations,
§63-2906.

New jobs, §63-2905.

Real property improvement tax
credit, §63-2904.

Property tax incentives, §63-2909.

Recapture of credit for failure to meet criteria, §63-2907.

Sales and use tax, §63-2908.

Sales and use tax rebates, §63-2908.

Short title, §63-2901.

CORPORATIONS.

Electric power.

License tax on electricity.

Statement of electric generating
companies, §63-2701.

Foreign corporations.

Income tax.

Computing taxable income,
§§63-3027, 63-3027A.

Income tax.

Adjustments to taxable income,
§63-3022.

Apportionment of tax, §63-3027.

CORPORATIONS —Cont'd**Income tax —Cont'd**

Burden of proof.

Water's edge election, §63-3027D.

Capital gains and losses from sales of real property located in state, §63-3027.

Charitable contributions.

Tax credit, §63-3029A.

Compensation.

Payment of compensation in state, §63-3027.

Computing taxable income of corporation, §§63-3027, 63-3027A.

Corporate liquidation distributions.

Information returns, §63-3037.

Credits.

Charitable contributions, §63-3029A.

Definitions, §§63-3006, 63-3027.

Water's edge election, §63-3027B.

Dividends.

Allocation and apportionment, §63-3027.

Water's edge election.

Treatment of dividends, §63-3027C.

Estimated tax.

Interest.

Unpaid or underpaid tax, §63-3046A.

Payment, §63-3036A.

Exemptions.

Corporations exempt from minimum tax, §63-3025C.

Foreign corporations.

Computing taxable income of corporations, §63-3027.

Franchise tax, §63-3025A.

Act not construed to repeal, §63-3079.

Imposition of tax, §63-3025.

Limited liability companies, §63-3006A.

Nonresident officers, directors and shareholders.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Patent or copyright royalties, §63-3027.

Payroll factor, §63-3027.

Presumptions.

Water's edge election, §63-3027D.

CORPORATIONS —Cont'd**Income tax —Cont'd**

Rents and royalties from real and tangible personal property, §63-3027.

Computation of taxable income of corporations, §63-3027.

Returns.

Persons required to make returns, §63-3030.

Sales factor.

Computing taxable income of corporation, §63-3027.

Tangible personal property.

Computing taxable income, §63-3027.

Water's edge election, §§63-3027B to 63-3027E.

Sales tax.

Responsibility for taxes, §63-3627.

CORRECTIONS.

Idaho security medical facilities, §§66-1301 to 66-1318.

Mentally ill.

Commitment of mentally ill convicts, §66-335.

Security medical facilities, §§66-1301 to 66-1318.

See MENTALLY ILL.

Security medical program,

§§66-1301 to 66-1318.

COST OF LIVING.**Property taxes.**

Cost-of-living modification, §63-705.

COSTS.**Licenses.**

License taxes.

Suits for recovery of tax, §63-2307.

Taxpayers' bill of rights.

Revenue officer violations, §63-4011.

COUNTIES.**Anticipation of revenue by counties.**

Taxing districts, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

Board of county commissioners.

Taxation.

Prepaid taxes.

Hearing and orders, §63-1603.

Veterans.

Service officers.

Appointment by board, §65-601.

Boards and commissions.

Memorials.

County memorial commission, §65-101.

COUNTIES —Cont'd**Justice fund**, §63-805.**Memorials.**

Servicemen's memorials.

County memorial commission,
§65-101.**Penalties.**

Taxation.

Seizure and sale of personal
property for taxes.

Purchase by county, §63-1108.

Property taxes.Property assessable in county,
§63-207.

Property in another county, §63-302.

Property tax relief fund.Counties adopting sales tax,
§63-2603.**Sales tax**, §§63-2601 to 63-2605.

Use tax.

Exemptions, §63-3621.

Taxation.

Board of county commissioners.

Prepaid taxes.

Hearing and orders, §63-1603.

Taxing districts.Anticipation of revenue by taxing
districts, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

Use tax.

Exemptions, §63-3621.

Veterans.Basic preference in initial
appointment, §65-504.

Competitive examinations.

Addition of points, §65-504.

Failing or refusing to give preference
in hiring, §65-506.Officials to observe preference in
hiring, §65-505.**COUNTY ASSESSORS.****Cooperative electrical associations.**Assessment of nonoperating
property, §63-3506.**COUNTY ATTORNEYS.****Property taxes.**

Unauthorized levy.

Action to set aside, §63-809.

COUNTY AUDITORS.**Bonds, surety.**

Property taxes.

Liability of auditor on official bond,
§63-1402.**License taxes.**General provisions, §§63-2301 to
63-2309.

See LICENSES AND PERMITS.

COUNTY AUDITORS —Cont'd**Property taxes.**

Bonds, surety.

Liability of auditor upon official
bond, §63-1402.

Computation of taxes.

Duties of auditor, §63-811.

Levy of taxes.

New taxing units.

Duties of auditor, §63-807.

Settlement by county auditor,
§63-1202.**COUNTY SALES TAX**, §§63-2601 to
63-2605.**Authority to adopt**, §63-2602.**Contract with state tax commission
to collect**, §63-2605.**Legislative findings**, §63-2601.**Ordinance assessing**, §63-2604.**Property tax relief fund**, §63-2603.**State tax commission to collect**,
§63-2605.**COUNTY TREASURER.****Cooperative electrical associations.**

Duty to collect tax, §63-3504.

Gross earnings tax.

Collection by county treasurer,
§63-3504.**Property taxes.**

Delinquent taxes.

Duties of treasurer, §63-907.

CREDIT CARDS.**Taxation.**

Payment by credit card, §63-117.

CRIMES AND OFFENSES.**Cigarette and tobacco products
taxes**, §63-2525.**Cigarette taxes**, §63-2512.**Criminal procedure.**Security medical program, §§66-1301
to 66-1318.

See MENTALLY ILL.

**Declarations for mental health
treatment.**Altering, forging, concealing or
destroying or reinstating
revocation, §66-612.**Fuels tax.**Doing business without a license,
§§63-2433, 63-2443.Gasoline purchases by retail dealers,
§63-2411.

Provision violation, §63-2443.

Special fuels permits, §63-2441.

CRIMES AND OFFENSES —Cont'd**Hospitals.**

- Hospitalization of mentally ill.
- Violation of patients' rights, §66-349.

Income tax.

- Divulging confidential information, §63-3076.
- Penalties for violations, §63-3075.

Licenses.

- License taxes.
- Failure to comply with provisions, §63-2309.

Mental health treatment.

- Declarations for.
- Altering, forging, concealing or destroying or reinstating revocation, §66-612.

Mines and mining.

- Tax information confidentiality, §63-2807.

Motor fuels tax, §63-2443.

- Doing business without a license, §§63-2433, 63-2443.
- Gasoline purchases by retail dealers, §63-2411.
- Special fuels permits, §63-2441.

Property taxes, §63-1402.

- Deferral of tax.
- False claims.
- Knowingly filing, §63-721.
- Tax deeds.
- Notice of pending issuance.
- Affidavit of compliance.
- False swearing, §63-1005.

Sales tax.

- Imposition by retailers, §63-3619.
- Sellers.
- Permits.
- Engaging in business without permit, §63-3620.

Taxation.

- Cigarette tax violations, §63-2512.
- Forests and products.
- Reporting violations, §63-1706.
- Fuel tax violations, §63-2443.
- Gasoline purchases by retail dealers, §63-2411.
- Income tax information.
- Confidentiality, §63-3076.
- License tax on electricity.
- False statements, §63-2707.
- Mine profit information.
- Confidentiality, §63-2807.
- Motor fuels tax.
- Doing business without a license, §§63-2433, 63-2443.

CRIMES AND OFFENSES —Cont'd**Taxation —Cont'd****Motor fuels tax —Cont'd**

- Gasoline purchases by retail dealers, §63-2411.
- Provision violations, §63-2443.
- Special fuels permits, §63-2441.
- Sales tax.
- Imposition by retailers, §63-3619.
- Permit violations, §63-3620.
- Tobacco products.
- Provision violations, §63-2512.
- Use tax, §63-3621.
- Evasion through exemption certificates, §63-3622.

Tobacco.

- Tax violations, §63-2512.

Veterans.

- Compensation for services rendered to, §65-303.

CRIMINAL PROCEDURE.**Acquittal.**

- Mentally ill.
- Persons acquitted of crime on grounds of mental illness or defect.
- Commitment to security medical program, §66-1304.

Mentally ill.

- Commitment of mentally ill convicts, §66-335.

Security medical program,

- §§66-1301 to 66-1318.
- See MENTALLY ILL.

CROPS.**Property taxes.**

- Exempt property, §63-602R.

CUSTOMER LISTS.**Property taxes.**

- Exemption of intangible personal property, §63-602L.

D**DAMAGES.****Cigarette and tobacco products taxes.**

- Private actions for violations, §63-2527.

Revenue officers.

- Taxpayer bill of rights violations, §63-4011.

Taxpayers' bill of rights.

- Revenue officer violations, §63-4011.

DANGEROUS AND MENTALLY ILL PERSONS.

Security medical program
generally, §§66-1301 to 66-1318.
See **MENTALLY ILL**.

DEALERS.

Fuels tax.
Retail dealers.
Defined, §63-2401.
Purchase of gasoline and/or
aircraft engine fuel, §63-2411.

DEATH.

Veterans.
Death certificates.
Furnishing certified copies without
fee, §65-301.

DEBIT CARDS.

Taxation.
Payment by debit card, §63-117.

DECEDENTS' ESTATES.

Income tax, §63-3024.
Computing tax income of part-year
and nonresident estates,
§63-3026A.
Nonresident individuals who are
beneficiaries of trust or estate,
§63-3026A.
Election as to taxable income,
§63-3022L.
Returns.
Required, §63-3030.
Property taxes.
Assessment of property of estates,
§63-212.

Sales tax.

Period of limitation on assessment
and collection, §63-3633.

Veterans.

Veterans' home.
Succession of property of deceased
resident, §66-906.

DECLARATIONS FOR MENTAL HEALTH TREATMENT,

§§66-601 to 66-613.
See **MENTALLY ILL**.

DEDUCTIONS.

Fuels tax, §63-2407.

DEEDS OF TRUST.

Veterans.
Furnishing without fee to veterans,
§65-301.

DEFINED TERMS.

Account holder.
Income tax deduction from medical
savings accounts, §63-3022K.

DEFINED TERMS —Cont'd

Accrued, §63-3016.

**Adequate appraisal and valuation
of all taxable properties in any
county.**

Property taxes, §63-314.

Adjusted gross income, §63-3011A.

Adults.

Developmentally disabled treatment
and care, §66-402.

After-care.

Interstate compact on mental health,
§66-1201.

Agency of the state.

Sales tax exemption, §63-3622O.

Agents.

Declarations for mental health
treatment, §66-601.

**Agricultural machinery and
equipment.**

Property taxes, §63-602EE.

Aircraft engine fuel.

Fuels tax, §63-2401.

All terrain vehicle.

Sales tax exemption, §63-3622R.

Alternative energy device.

Income deduction for, §63-3022C.

Amount asserted.

Income tax appeals, §63-3049.

Amusement devices.

Sales tax, §63-3623B.

Appraisal.

Property taxes, §63-201.

Appropriate agency.

Income tax, §63-3067C.

Appropriate basis.

Income tax computations, §63-3026A.

Armed forces.

Veterans, §65-502.

Artificial life-sustaining procedure.

Developmentally disabled treatment
and care, §66-402.

Attending physician.

Declarations for mental health
treatment, §66-601.

ATV.

Sales tax exemption, §63-3622R.

**Average annual net wood
production.**

Taxation of forest lands and forest
products, §63-1701.

Bare land value.

Taxation of forest lands and forest
products, §63-1701.

Bargeline.

Property taxes, §63-201.

Biodiesel.

Fuels tax, §63-2401.

DEFINED TERMS —Cont'd**Biodiesel blend.**

Fuels tax, §63-2401.

Biofuel.

Income tax credits, §63-3029M.

Bonds.

Fuels tax, §63-2401.

Business.

Tobacco products tax, §63-2551.

Business income.

Corporate income tax, §63-3027.

Multistate tax compact, §63-3701.

Business inventory.

Property tax exemptions, §63-602W.

Canal companies.

Sales tax exemption for nonprofit organizations, §63-3622O.

Capital stock tax.

Multistate tax compact, §63-3701.

Center for independent living.

Income tax credits, §63-3029C.

Sales tax exemption, §63-3622O.

CFTM.

Taxation of forest lands and forest products, §63-1701.

Cigarette.

Cigarette tax, §63-2502.

Claimants.

Property tax relief, §63-701.

Class 10,000 clean room.

Sales tax, §63-3622NN.

Clean room.

Sales tax, §63-3622NN.

Clothes.

Sales tax exemption for nonprofit organizations, §63-3622O.

Cogenerators.

Property taxes, §63-201.

Collection.

Property tax exemptions, §63-602CC.

Recycling equipment credits, §63-3029D.

Collection costs.

Property taxes, §63-201.

Commercial.

Religious corporations' sales tax exemption, §63-3622KK.

Commercial domicile.

Computation of taxable income of corporations, §63-3027.

Multistate tax compact, §63-3701.

Commercial mobile service carrier.

Income tax credit for broadband equipment investments, §63-3029I.

Commercial motor boat.

Fuels tax, §63-2401.

DEFINED TERMS —Cont'd**Communication.**

Taxpayers' bill of rights, §63-4001.

Compensation.

Corporate income tax, §63-3027.

Multistate tax compact.

Division of income, §63-3701.

Competition.

Religious corporations' sales tax exemption, §63-3622KK.

Computer software.

Sales tax, §63-3616.

Conservation agreement.

Property taxes.

Land used to protect wildlife and wildlife habitat, §63-605.

Contiguous.

Property tax exemptions, §63-604.

Contracting units.

Collection of taxes from public works contractors, §63-1501.

Contractor.

Collection of taxes from public works contractors, §63-1501.

Controlled substances.

Illegal drug stamp tax, §63-4202.

Cooperative electrical associations,

§63-3501.

Cooperative natural gas associations,

§63-3501.

Corporation.

Income tax, §63-3006.

Cost of gas.

Taxing gross earnings of cooperative natural gas association, §63-3501.

Cost of power.

Taxing gross receipts of cooperative electrical association, §63-3501.

Costs.

Recycling equipment tax credits, §63-3029D.

Custodial expense.

Taxation of forest lands and forest products, §63-1701.

Custom computer program.

Sales tax, §63-3616.

Dangerous and mentally ill persons.

Idaho security medical program, §66-1305.

Deferred taxes.

Forest lands and products, §63-1701.

Deficiency.

Income taxation, §63-3044.

Delinquency.

Property taxes, §63-201.

DEFINED TERMS —Cont'd**Dependent.**

Medical savings account income tax deductions, §63-3022K.

Dependent child.

Medical savings account income tax deductions, §63-3022K.

Depository.

Medical savings account income tax deductions, §63-3022K.

Designated examiner.

Hospitalization of mentally ill, §66-317.

Designation period.

Taxation of forest lands and forest products, §63-1701.

Developmental disability.

Developmentally disabled treatment and care, §66-402.

Development of a retail commercial complex whose stores sell tangible personal property or tangible services.

Sales tax, §63-3641.

Directly used or consumer in or during a farming operation.

Sales tax exemptions, §63-3622D.

Disabled.

Income tax.

Deduction of certain retirement benefits, §63-3022A.

Disabled veteran, §65-502.**Dispositioner.**

Hospitalization of mentally ill, §66-317.

Disputed tax liability.

Taxpayers' bill of rights, §63-4001.

Distributor.

Fuels tax, §63-2401.

Tobacco products tax, §63-2551.

Drugs.

Sales tax exemption for prescriptions, §63-3622N.

Durable medical equipment.

Sales tax exemption for prescriptions, §63-3622N.

Dyed fuel.

Fuels tax, §63-2401.

Educational institution.

Sales tax exemption for nonprofit organizations, §63-3622O.

Eligible individual.

Income tax on money paid to Japanese-Americans for reparations, §63-3022G.

Eligible medical expense.

Income tax deductions, §63-3022K.

DEFINED TERMS —Cont'd**Emancipated minor.**

Developmentally disabled treatment and care, §66-402.

Employer.

Income tax, §63-3017.

Evacuation, relocation and internment period.

Income tax on money paid to Japanese-Americans for reparations, §63-3022G.

Evaluation committee.

Developmentally disabled treatment and care, §66-402.

Exclusive.

Property exempt from taxation, §63-602.

Exclusively.

Property exempt from taxation, §63-602.

Existing building.

Income deduction for insulation of residences, §63-3022B.

Exported.

Fuels tax, §63-2401.

Facilities.

Declarations for mental health treatment, §66-601.

Developmentally disabled treatment and care, §66-402.

Hospitalization of mentally ill, §66-317.

Farm.

Sales tax, §63-3603.

Farmer.

Income tax, §63-3020.

Farming.

Sales tax, §63-3603.

Fiduciaries.

Income tax, §63-3007.

Fifth wheel trailer.

Sales tax production exemption, §63-3622HH.

Final federal determination.

Income taxation, §63-3068.

Credits and refunds, §63-3072.

Financial organization.

Multistate tax compact, §63-3701.

Fold down camping trailer.

Sales tax production exemption, §63-3622HH.

Food banks or soup kitchens.

Sales tax exemption, §63-3622O.

Forest.

Taxation of forest lands and forest products, §63-1701.

Forest land.

Taxation of forest lands and forest products, §63-1701.

DEFINED TERMS —Cont'd**Forest landowner.**

Taxation of forest lands and forest products, §63-1701.

Forest products.

Taxation of forest lands and forest products, §63-1701.

Forest products yield tax, §63-1701.**Forest protective associations.**

Sales tax exemption for nonprofit organizations, §63-3622O.

Forest value.

Taxation of forest lands and forest products, §63-1701.

For-profit.

Property tax exemptions, §63-604.

Freeway interchange improvements.

Sales tax, §63-3641.

Fuel cell.

Sales tax.

Equipment used in alternative method of generating electricity, §63-3622QQ.

Fuel distributor.

Income tax credit for capital investment in biofuel infrastructure, §63-3029M.

Fueling infrastructure.

Income tax credit for capital investment in biofuel infrastructure, §63-3029M.

Gas line mileage factor.

Cooperative natural gas association, §63-3501.

Gasohol.

Fuels tax, §63-2401.

Gasoline.

Fuels tax, §63-2401.

General public.

Sales tax exemption for religious corporations or societies, §63-3622KK.

Gravely disabled.

Hospitalization of mentally ill, §66-317.

Gross electrical earnings.

Cooperative electrical association, §63-3501.

Gross income.

Taxation, §63-3011.

Gross natural gas earnings.

Cooperative natural gas association, §63-3501.

Gross receipts tax.

Multistate tax compact, §63-3701.

Gross wind energy earnings.

Cooperative natural gas association, §63-3501.

DEFINED TERMS —Cont'd**Headquarters or administrative facilities.**

Corporate headquarters incentive act, §63-2902.

Health-related entities.

Sales tax exemption for nonprofit organizations, §63-3622O.

Highway.

Fuels tax, §63-2401.

Homestead.

Property tax relief, §63-701.

Honorable conditions.

Veterans, §65-502.

Hospitals.

Sales tax exemption for nonprofit organizations, §63-3622O.

Household.

Property tax relief, §63-701.

Household income.

Property tax relief, §63-701.

Human organ.

Income tax credits, §63-3029K.

Idaho taxable income, §63-3011C.**Idling.**

Fuels tax, §63-2401.

IFTA fuels tax, §63-2401.**Imported.**

Fuels tax, §63-2401.

Importer.

Cigarette and tobacco products taxes, §63-2528.

Improvements.

Property taxes, §63-201.

Incapable.

Declarations for mental health treatment, §66-601.

Includes.

Income tax, §63-3012.

Sales tax, §63-3605.

Including.

Income tax, §63-3012.

Sales tax, §63-3605.

Income.

Property tax relief, §63-701.

Income tax.

Multistate tax compact, §63-3701.

Incurred, §63-3016.**Individuals.**

Income tax, §63-3008.

Initial appointment.

Veterans, §65-502.

Inpatient treatment facility.

Hospitalization of mentally ill, §66-317.

Institution of higher learning.

Income tax credit for charitable contributions, §63-3029A.

DEFINED TERMS —Cont'd**Institutions.**

Interstate compact on mental health,
§66-1201.

Insulation.

Income deduction for insulation of
residences, §63-3022B.

Integrated circuit.

Sales tax.

Clean rooms, §63-3622NN.

Internal revenue code.

Income tax, §63-3004.

Income tax credits for capital
investments, §63-3029B.

International fuel tax agreement.

Fuels tax, §63-2401.

Investment in new plant.

Corporate headquarters incentive
act, §63-2902.

Small employer incentive act,
§63-4402.

Involuntary patient.

Hospitalization of mentally ill,
§66-317.

Jurisdiction.

Fuels tax, §63-2401.

Key employee.

Veterans, §65-502.

Lacks capacity to make an informed decision concerning treatment.

Developmentally disabled treatment
and care, §66-402.

Hospitalization of mentally ill,
§66-317.

Landfill gas.

Sales tax.

Equipment used in alternative
method of generating
electricity, §63-3622QQ.

Late charge.

Property taxes, §63-201.

Lawful money of the United States.

Property taxes, §63-201.

Licensed distributor.

Fuels tax, §63-2401.

Licensed emergency medical service agency (EMS).

Sales tax exemption, §63-3622O.

Licensed physician.

Hospitalization of mentally ill,
§66-317.

Likely to injure himself or others.

Developmentally disabled treatment
and care, §66-402.

Hospitalization of mentally ill,
§66-317.

DEFINED TERMS —Cont'd**Literature.**

Sales tax, §63-3622I.

Live organ donation.

Income tax credits, §63-3029K.

Live organ donation expenses.

Income tax credits, §63-3029K.

Location information.

Taxpayers' bill of rights, §63-4001.

Logging.

Sales tax, §63-3605A.

Long-term care expenses.

Medical savings account income tax
deductions, §63-3022K.

Low impact hydro.

Sales tax.

Equipment used in alternative
method of generating
electricity, §63-3622QQ.

Machinery and equipment.

Sales tax.

Equipment used in alternative
method of generating
electricity, §63-3622QQ.

Manage financial resources.

Developmentally disabled treatment
and care, §66-402.

Manufactured home.

Property taxes, §63-201.

Manufacturer.

Cigarette and tobacco products taxes,
§63-2528.

Tobacco products tax, §63-2551.

Market.

Sales tax exemption for incidental
sales by religious corporations or
societies, §63-3622KK.

Market value.

Property taxes, §63-201.

Marriage penalty.

Income tax, §63-3022N.

Measured by income.

Credit for income taxes paid in other
state, §63-3029.

Media production project.

Sales tax, §63-3622TT.

Medical savings account.

Income tax deductions, §63-3022K.

Meet essential requirements for physical health or safety.

Developmentally disabled treatment
and care, §66-402.

Mental deficiency.

Interstate compact on mental health,
§66-1201.

Mental health treatment.

Declarations for mental health
treatment, §66-601.

DEFINED TERMS —Cont'd**Mental illness.**

- Declarations for mental health treatment, §66-601.
- Interstate compact on mental health, §66-1201.

Mentally ill.

- Hospitalization of mentally ill, §66-317.

Military duty.

- Veterans, §65-502.

Mining.

- Sales tax, §63-3605B.

Minor.

- Developmentally disabled treatment and care, §66-402.

Modular building.

- Sales tax, §63-3606A.

Monetized bullion.

- Sales tax exemption, §63-3622V.

Money-operated dispensing equipment.

- Sales tax exemption, §63-3622II.

Motorcycle.

- Sales tax production exemption, §63-3622HH.

Motor fuel.

- Fuels tax, §63-2401.

Motor home.

- Sales tax production exemption, §63-3622HH.

Motor vehicle.

- Fuels tax, §63-2401.
- Sales tax, §63-3606B.

Multiplexing.

- Income tax credit for broadband equipment investments, §63-3029I.

Museum.

- Sales tax exemption for nonprofit organizations, §63-3622O.

Net operating loss.

- Income tax, §63-3021.

Net profits.

- Taxation of profits of mines, §63-2802.

New employee.

- Corporate headquarters incentive act, §63-2902.
- Income tax, §63-3029E.
- Small employer incentive act, §63-4402.

New manufactured home.

- Sales tax, §63-3606.

New manufactured housing.

- Property taxes, §63-317.

New plant and building facilities.

- Small employer incentive act, §63-4402.

DEFINED TERMS —Cont'd**Nonbusiness income.**

- Corporate income tax computation, §63-3027.
- Multistate tax compact, §63-3701.

Nonoperating property.

- Cooperative electrical or natural gas association, §63-3501.

Nonprofit institution of secondary or higher education.

- Income tax credit for charitable contributions, §63-3029A.

Nonprofit rehabilitation facility.

- Income tax credit for rehabilitation facilities, §63-3029C.

Nonresident.

- Income tax, §63-3014.

Nonsale clothier.

- Sales tax exemption for nonprofit organizations, §63-3622O.

Nuclear waste.

- Recycling equipment tax credits, §63-3029D.

Occasional sale.

- Sales tax, §63-3622K.

Occupied.

- Property taxes, §63-317.
- Property tax relief, §63-701.

Off-highway motorbike.

- Sales tax production exemption inapplicable to sales regarding recreation-related vehicles, §63-3622HH.

Operating property.

- Cooperative electrical or natural gas association, §63-3501.
- Property taxes, §63-201.

Other wireless carrier.

- Income tax credit for broadband equipment investments, §63-3029I.

Outpatient commitment.

- Hospitalization of mentally ill, §66-317.

Owner/ownership.

- Property tax relief, §63-701.

Package of cigarettes.

- Cigarette tax, §63-2502.

Packet switching.

- Income tax credit for broadband equipment investments, §63-3029I.

Paid or accrued.

- Income tax, §63-3016.

Paid or incurred.

- Income tax, §63-3016.

DEFINED TERMS —Cont'd**Park trailer.**

Sales tax production exemption inapplicable to sales regarding recreation-related vehicles, §63-3622HH.

Partnership.

Income tax, §63-3006B.

Part-year resident.

Income tax, §63-3013A.

Party in interest.

Payment and collection of real property taxes, §63-201.

Property taxes, §63-201.

Pass-through entity.

Income taxation, §63-3068.

Patient.

Interstate compact on mental health, §66-1201.

Permanent resident alien.

Income tax on money paid to Japanese-Americans for reparations, §63-3022G.

Person.

Cigarette and tobacco products taxes, §63-2528.

Fuels tax, §63-2401.

Income tax, §§63-3005, 63-3083.

Property taxes, §63-201.

Sales tax, §63-3607.

Personal property.

Property taxes, §63-201.

Placed into service.

Income tax credit for capital investment in biofuel infrastructure, §63-3029M.

Place of business.

Tobacco products tax, §63-2551.

Platting.

Property tax exemptions, §63-604.

Political subdivision.

Sales tax exemption, §63-3622O.

Position.

Veterans, §65-502.

Possession.

Illegal drug stamp tax, §63-4202.

Post consumer waste.

Property tax exemptions, §63-602CC.

Tax credits for equipment, §63-3029D.

Post industrial waste.

Property tax exemptions, §63-602CC.

Tax credits for equipment, §63-3029D.

Postproduction.

Sales tax.

Media production project tax rebate, §63-3622TT.

DEFINED TERMS —Cont'd**Practitioner.**

Sales tax exemption for prescriptions, §63-3622N.

Precious metal bullion.

Sales tax exemption, §63-3622V.

Preproduction.

Sales tax.

Media production project tax rebate, §63-3622TT.

Primary dwelling place.

Property tax relief, §63-701.

Private college.

Income tax deductions, §63-3022J.

Private community college.

Income tax deductions, §63-3022J.

Private railcar fleet.

Property taxes, §63-201.

Private technical college.

Income tax deductions, §63-3022J.

Private university.

Income tax deductions, §63-3022J.

Product.

Property tax exemptions, §63-602CC.

Recycling equipment tax credits, §63-3029D.

Production.

Sales tax.

Media production project tax rebate, §63-3622TT.

Professional mental health**clinician.**

Declarations for mental health treatment, §66-601.

Project period.

Corporate headquarters incentive act, §63-2902.

Small employer incentive act, §63-4402.

Project site.

Corporate headquarters incentive act, §63-2902.

Small employer incentive act, §63-4402.

Promoter sponsored event.

Sales tax, §63-3620C.

Prosthetic device.

Sales tax exemption for prescriptions, §63-3622N.

Protection and advocacy system.

Developmentally disabled treatment and care, §66-402.

Hospitalization of mentally ill, §66-317.

Public college.

Income tax deductions, §63-3022J.

Public community college.

Income tax deductions, §63-3022J.

DEFINED TERMS —Cont'd**Public elementary or public secondary school.**

Income tax deductions, §63-3022J.

Public employee.

Veterans, §65-502.

Public employment.

Veterans, §65-502.

Public library or library district.

Income tax deductions, §63-3022J.

Public technical college.

Income tax deductions, §63-3022J.

Public university.

Income tax deductions, §63-3022J.

Public utility.

Multistate tax compact, §63-3701.

Property taxes, §63-201.

Purchase.

Recycling equipment tax credits,
§63-3029D.

Sales tax, §63-3608.

Qualified broadband equipment.

Income tax, §63-3029I.

Qualified claimant.

Property tax deferral act, §63-713.

Qualified collection agency.

Tax commission, §63-119.

Qualified equipment.

Property tax exemptions, §63-602CC.

Recycling equipment tax credits,
§63-3029D.

Qualified investment.

Income tax credit for capital
investment in biofuel
infrastructure, §63-3029M.

Income tax credits for capital
investments, §63-3029B.

Small employer incentive act,
§63-4402.

Qualified property.

Capital gains deduction from income
taxes, §63-3022h.

Property tax deferral act, §63-713.

Qualified taxpayer.

Income taxation.

Water's edge election, §63-3027B.

Qualifying media production project expenditures.

Sales tax.

Media production project tax
rebate, §63-3622TT.

Qualifying senior citizen center.

Sales tax exemption, §63-3622O.

Radioactive waste.

Recycling equipment tax credits,
§63-3029D.

Railroad.

Property taxes, §63-201.

DEFINED TERMS —Cont'd**Real outlet.**

Tobacco products tax, §63-2551.

Real property.

Property taxes, §63-201.

Recapture period.

Corporate headquarters incentive
act, §63-2902.

Income tax credit for capital
investment in biofuel
infrastructure, §63-3029M.

Small employer incentive act,
§63-4402.

Receiving state.

Interstate compact on mental health,
§66-1201.

Record owner.

Payment and collection of real
property taxes, §63-201.

Property taxes, §63-201.

Recreational vehicle.

Fuels tax, §63-2401.

Sales tax production exemption,
§63-3622HH.

Refund.

Taxes, §63-1305.

Register.

Veterans, §65-502.

Remediated value.

Property tax exemptions, §63-602BB.

Repairs.

Sales tax production exemption,
§63-3622HH.

Research and development.

Sales tax exemption, §63-3622RR.

Reservation.

Sales tax exemption on sales by
Indian tribes, §63-3622Z.

Resident.

Income tax, §63-3013.

Residential improvements.

Property tax exemption, §63-602W.

Residential property.

Property taxes, §63-602H.

Respondent.

Developmentally disabled treatment
and care, §66-402.

Retail dealer.

Fuels tax, §63-2401.

Retailer.

Cigarette tax, §63-2502.

Sales tax, §63-3610.

Tobacco products tax, §63-2551.

Retailer engaged in business in this state.

Sales tax, §63-3611.

DEFINED TERMS —Cont'd**Retail fuel dealer.**

Income tax credit for capital investment in biofuel infrastructure, §63-3029M.

Retail sale.

Sales tax, §63-3609.

Return.

Income tax credits and refunds, §63-3072.
Limitation period for issuing notice of deficiency and collection of income tax, §63-3068.

Revenue officer.

Taxpayers' bill of rights, §63-4001.

Revenue-producing enterprise.

Capital gains deduction from income taxes, §63-3022H.
Income tax, §63-3029E.

Sale at retail.

Sales tax, §63-3609.

Sales.

Corporate income tax computation, §63-3027.
Multistate tax compact, §63-3701.
Taxation, §63-3612.
Tobacco products tax, §63-2551.

Sales price.

Sales tax, §63-3613.

Sales tax.

Multistate tax compact, §63-3701.

Same or a substantially identical revenue-producing enterprise.

Income tax, §63-3029E.

Satellite carrier.

Income tax credit for broadband equipment investments, §63-3029I.

Seller.

Sales tax, §63-3614.

Semiconductor.

Sales tax.
Clean rooms, §63-3622NN.

Semiconductor manufacturing processes.

Sales tax.
Clean rooms, §63-3622NN.

Sending state.

Interstate compact on mental health, §66-1201.

Service-connected disability.

Veterans, §65-502.

Snowmobile.

Sales tax production exemption, §63-3622HH.

Soup kitchens, §63-3622O.**Special assessment.**

Property taxes, §63-201.

DEFINED TERMS —Cont'd**Special district.**

Dissolution, §63-4102.

Special fuels.

Fuels tax, §63-2401.

Special fuels dealer.

Fuels tax, §63-2401.

Special fuels user.

Fuels tax, §63-2401.

State.

Corporate income tax computation, §63-3027.
Credit for income taxes paid in other state, §63-3029.
Interstate compact on mental health, §66-1201.
Multistate tax compact, §63-3701.
Division of income, §63-3701.

In the state.

Sales tax, §63-3604.

Storage.

Sales tax, §63-3615.

Stumpage owner.

Taxation of forest lands and forest products, §63-1701.

Stumpage value.

Taxation of forest lands and forest products, §63-1701.

Subdivision.

Multistate tax compact, §63-3701.

Subjobber.

Tobacco products tax, §63-2551.

Substantial change of use.

Taxation of forest lands and products, §63-1701.

Substantially used in interstate commerce.

Sales tax exemption, §63-3622R.

Supervised residential facility.

Hospitalization of mentally ill, §66-317.

System value.

Property taxes, §63-201.

Tangible personal property.

Sales tax, §63-3616.

Tax.

Collection of taxes from public works contractors, §63-1501.

Multistate tax compact, §63-3701.

Taxable income, §63-3011B.**Taxable value.**

Property taxes, §§63-201, 63-811.

Taxable year.

Income tax, §63-3010.

Tax code area.

Property taxes, §63-201.

Tax incentive criteria.

Corporate headquarters incentive act, §63-2902.

DEFINED TERMS —Cont'd**Tax incentive criteria —Cont'd**

Small employer incentive act,
§63-4402.

Taxing district.

Anticipation of revenue by, §63-3101.
Property taxes, §§63-201, 63-510.

Taxing unit.

Collection of taxes from public works
contractors, §63-1501.

Tax levy.

Cooperative electrical or natural gas
association, §63-3501.

Tax obligation.

Taxpayers' bill of rights, §63-4001.

Taxpayer.

Corporate headquarters incentive
act, §63-2902.
Income tax, §63-3009.
Multistate tax compact, §63-3701.
Sales tax, §63-3618.
Small employer incentive act,
§63-4402.

Tax unit.

Cooperative electrical or natural gas
association, §63-3501.

Technological equipment.

Income tax deductions, §63-3022J.

Telecommunications carrier.

Income tax credit for broadband
equipment investments,
§63-3029I.

Temporary or casual employment.

Veterans, §65-502.

In this state.

Sales tax, §63-3604.

Timber.

Taxation of forest lands and forest
products, §63-1701.

Tobacco product.

Tobacco products tax, §63-2551.

Transacting business.

Income tax, §63-3023.

Transient equipment.

Use tax on, §63-3621A.

Transient personal property.

Property taxes, §63-201.

Transmitted electronically.

Property taxes, §63-115.

Travel trailer.

Sales tax production exemption,
§63-3622HH.

Truck camper.

Sales tax production exemption
inapplicable to sales regarding
recreation-related vehicles,
§63-3622HH.

DEFINED TERMS —Cont'd**Unused infrastructure.**

Property tax exemptions, §63-602II.

Use.

Fuels tax, §63-2401.
Sales tax, §63-3615.

Used directly.

Sales tax.
Equipment used in alternative
method of generating
electricity, §63-3622QQ.

Use tax.

Multistate tax compact, §63-3701.

Vessel.

Sales tax exemption, §63-3622R.

Veteran, §§65-203, 65-502.**Voluntary patient.**

Hospitalization of mentally ill,
§66-317.

Volunteer fire department.

Sales tax exemption, §63-3622O.

Warrant of distraint.

Property taxes, §63-201.

Wartime veteran, §65-203.**Water's edge combined group.**

Income taxation, §63-3027B.

Weighted wire mileage factor.

Cooperative electrical association,
§63-3501.

Wholesalers.

Cigarette tax, §63-2502.

Wholesale sale.

Cigarette tax, §63-2502.

Wholesale sales price.

Tobacco products tax, §63-2551.

Widow.

Income tax.
Deduction of certain retirement
benefits, §63-3022A.

WPPSS 4 and 5 costs.

Cooperative electrical association,
§63-3501.

DENTAL PROSTHESES.**Sales tax exemption, §63-3622N.****DEPARTMENT OF REVENUE AND****TAXATION, §§63-101 to 63-119.****DEPOSITS.****Income tax.**

Disposition of revenue received,
§63-3067.

Property taxes.

Exempt property, §63-602L.

DETENTION.**Mentally ill.**

Hospitalization of mentally ill.
Detention pending judicial
determination, §66-350.

DETENTION —Cont'd**Mentally ill —Cont'd**

Hospitalization of mentally ill
—Cont'd

Detention without hearing,
§66-326.

Writ of habeas corpus, §66-347.

Temporary detention, §66-330.

DEVELOPMENTAL DISABILITIES.**Definitions.**

Treatment and care, §66-402.

District courts.

Treatment and care.

Jurisdiction, §66-403.

Orders in protective proceedings,
§66-405.

Petition for reexamination of
order of guardianship or
commitment, §66-408.

Income tax.

Deductions for developmentally
disabled, §63-3022E.

Payments in lieu of deductions,
§63-3025D.

Treatment and care, §§66-401 to 66-414.

Application to residential facility.

Procedure upon application,
§66-410.

Assets.

Persons with assets sufficient to
pay expenses, §66-414.

Authority to admit developmentally
disabled persons, §66-409.

Change in disposition, §66-407.

Commitment.

Involuntary commitment and
treatment, §66-406.

Judicial procedure for commitment
to director, §66-406.

Change in disposition, §66-407.

Hearings, §66-406.

Order in protective proceedings,
§66-405.

Petition for reexamination for
order of commitment, §66-408.

Conservators.

Appointment of conservators,
§66-404.

Notice, §66-404.

Contents of individual treatment
plans, §66-413.

Definitions, §66-402.

Discharge, §66-411.

District courts.

Jurisdiction, §66-403.

DEVELOPMENTAL DISABILITIES**—Cont'd****Treatment and care —Cont'd****District courts —Cont'd**

Orders in protective proceedings,
§66-405.

Petition for reexamination of
order of guardianship or
commitment, §66-408.

Facilities.

Authority to admit
developmentally disabled
persons, §66-409.

Individual treatment plans,
§66-413.

Procedure upon application to
residential facility, §66-410.

Review and discharge, §66-411.

Rights in facilities, §66-412.

Guardians.

Appointment of guardians,
§66-404.

Hearings.

Judicial procedure for commitment
to director, §66-406.

Individual treatment plans, §66-413.

Intent of legislature, §66-401.

Judicial procedure for commitment to
director, §66-406.

Change in disposition, §66-407.

Legislative intent, §66-401.

Liability.

Developmentally disabled persons
with assets sufficient to pay
expenses, §66-414.

Notice.

Appointment of guardian or
conservator, §66-404.

Orders.

Petition for reexamination,
§66-408.

Protective proceedings, §66-405.

Petitions.

Reexamination of order of
guardianship or commitment,
§66-408.

Plans.

Individual treatment plans,
§66-413.

Procedure upon application to
residential facility, §66-410.

Protective proceedings.

Orders, §66-405.

Purpose of legislature, §66-401.

Relatives.

Liability, §66-414.

DEVELOPMENTAL DISABILITIES

—Cont'd

Treatment and care —Cont'd

Review and discharge, §66-411.

Rights in facilities, §66-412.

Treatment facilities.

Authority to admit developmentally disabled persons, §66-409.

Individual treatment plans, §66-413.

Procedure upon application to residential facility, §66-410.

Review and discharge, §66-411.

Rights in facilities, §66-412.

DIABETES.

Sales tax exemption of devices or chemical reagents used to test or monitor blood or urine of diabetic, §63-3622N.

DIALYSIS.

Sales tax exemption of drugs and supplies, §63-3622N.

DISABLED PERSONS.**Commitment hearings.**

Treatment and care of developmentally disabled.

Judicial procedure for commitment to director, §66-406.

Conservators.

Treatment and care of developmentally disabled.

Appointment of conservators, §66-404.

Developmental disabilities.

Treatment and care, §§66-401 to 66-414.

District courts.

Treatment and care of developmentally disabled.

Jurisdiction, §66-403.

Orders in protective proceedings, §66-405.

Petition for reexamination of order of guardianship or commitment, §66-408.

Guardians.

Treatment and care of developmentally disabled.

Appointment of guardians, §66-404.

Petition for reexamination of order of guardianship or commitment, §66-408.

Income tax.

Deductions for developmentally disabled, §63-3022E.

Payments in lieu of deductions, §63-3025D.

DISABLED PERSONS —Cont'd
Notice.

Treatment and care of developmentally disabled.

Appointment of guardian or conservator, §66-404.

Orders.

Treatment and care of developmentally disabled.

Petition for reexamination of order of guardianship or commitment, §66-408.

Protective proceedings, §66-405.

Petitions.

Treatment and care of developmentally disabled.

Reexamination of order of guardianship or commitment, §66-408.

Relatives.

Treatment and care of developmentally disabled.

Liability, §66-414.

Rights in facilities.

Treatment and care of developmentally disabled, §66-412.

Taxation.

Deductions for developmentally disabled persons, §§63-3022E, 63-3025D.

Payments in lieu of deductions, §63-3025D.

DISASTERS.**Property taxes.**

State tax commission.

Filing and payment extensions as disaster relief, §§63-114, 63-220.

DISCRIMINATION.**Mentally ill.**

Civil rights.

Hospitalization of mentally ill.

Exercise of civil rights, §66-346.

Civil rights.

Security medical program.

Rights of patients, §66-1310.

Right to humane care and treatment, §66-1311.

DISEASES.**Tuberculosis.**

Idaho tuberculosis hospital, §§66-1001 to 66-1007.

See TUBERCULOSIS.

DISTRAINT.**Income tax,** §§63-3057 to 63-3063.

DISTRAINT —Cont'd

Property taxes.

- Warrant of distraint, §63-1013.
- Defined, §63-201.
- Service, §63-1013.

DISTRICT COURTS.

Disabled persons.

- Treatment and care of developmentally disabled.
- Jurisdiction, §66-403.
- Orders in protective proceedings, §66-405.
- Petition for reexamination of order of guardianship or commitment, §66-408.

Drug stamp tax.

- Exemption claims, §63-4211.

Illegal drug stamp tax.

- Exemption claims, §63-4211.

Income tax.

- Action to collect unpaid tax or deficiency, §63-3050.
- Appeals to supreme court from judgment of district court, §63-3049.
- Tax commission to release notice of lien, §63-3055.

Jurisdiction.

- Disabled persons.
- Treatment and care of developmentally disabled, §66-403.

DISTRICTS.

Definitions.

- Dissolution of special districts, §63-4102.

Dissolution of special districts,

- §§63-4101 to 63-4106.

Elections.

- Special districts.
- Dissolution, §63-4103.

Funds.

- Special districts.
- Dissolution.
- Disposition of funds, §63-4105.

Hearings.

- Special districts.
- Dissolution, §63-4103.

Property taxes.

- Taxing districts.
- Applicability of provisions to, §63-1301.
- Defined, §63-201.
- Fees for services, §63-1311.
- Increases, §63-1311A.

DISTRICTS —Cont'd

Special districts.

- Dissolution of special districts, §§63-4101 to 63-4106.

Taxation.

- Special districts.
- Dissolution.
- Special levy for payment of indebtedness, §63-4106.

DIVISION OF INCOME FOR TAX PURPOSES ACT.

Multistate tax compact, §§63-3701 to 63-3709.

- See TAXATION.

DIVORCE.

Veterans.

- Furnishing divorce certificates without fee, §65-301.

DRUGS.

Illegal drug stamp tax, §§63-4201 to 63-4211.

- See ILLEGAL DRUG STAMP TAX.

Taxation.

- Illegal drug stamp tax, §§63-4201 to 63-4211.

DURABLE MEDICAL EQUIPMENT.

Sales tax exemption, §63-3622N.

DYED FUEL.

Defined, §63-2401.

Prohibited for use on highway, §63-2425.

DYSLEXIA.

Treatment and care of developmentally disabled, §§66-401 to 66-414.

- See DEVELOPMENTAL DISABILITIES.

E

ECONOMIC DEVELOPMENT.

Corporate headquarters incentive act, §§63-2901 to 63-2910.

Small employer incentive act, §§63-4401 to 63-4409.

EDUCATION.

Bond issues.

- Destroyed school buildings.
- Authority of state board of education to authorize election, §63-1309.

Income tax.

- Credit for charitable contributions, §63-3029A.

EDUCATION —Cont'd**Income tax —Cont'd**

- Public broadcast systems foundations.
- Credits for contributions to, §63-3029A.

Property taxes.

- Exemption of property used for school or educational purpose, §63-602E.

Sales tax.

- Educational institutions.
- Exemption of nonprofit organizations, §63-3622O.
- Exemptions.
 - Driver's education program sponsored by nonprofit educational institution.
 - Motor vehicle temporarily donated to, §63-3622R.

School districts.

- Anticipation of revenue by taxing districts, §§63-3101 to 63-3108.
- See TAXING DISTRICTS.

Property taxes.

- Assessment ratios and determination of adjusted market value for assessment purposes for school districts, §63-315.

Taxing districts.

- Anticipation of revenue, §§63-3101 to 63-3108.
- See TAXING DISTRICTS.

State board of education and board of regents of the University of Idaho.

- Bond election for replacing destroyed school buildings.
- Power of board to authorize election, §63-1309.

Taxing districts.

- School districts.
- Anticipation of revenue by taxing districts, §§63-3101 to 63-3108.

Use tax.

- Exemption of educational institutions, §63-3621.

ELECTIONS.**County sales tax.**

- Authority to adopt, §63-2602.

Income tax.

- Election campaign fund.
- Designation by individuals, §63-3088.

Property taxes.

- Creation of new taxing district.
- Notice of election, §63-802C.

ELECTIONS —Cont'd**Property taxes —Cont'd**

- Defeat of special taxing district or bond proposal.
- Barred to subsequent elections for specified time, §63-1309.

Taxing districts.

- Creation of new taxing district.
- Notice of election, §63-802C.

ELECTRIC POWER.**Construction and interpretation.**

- License tax on electricity.
- Separability of provisions, §63-2711.

Cooperative electrical associations.

- Tax on gross earnings, §§63-3501 to 63-3506.
- See COOPERATIVE ELECTRICAL ASSOCIATIONS.

Corporations.

- License tax on electricity.
- Statement of electric generating companies, §63-2701.

Interest.

- License tax on electricity.
- Delinquent payment, §63-2702.
- Excess payment, §63-2702A.

Irrigation and water rights.

- License tax on electricity.
- Exemption of electricity for pumping water for irrigation purposes, §63-2705.

Kilowatt-hour tax, §§63-2701 to 63-2711.**License tax on electricity, §§63-2701 to 63-2711.**

- Actions against state, §63-2708.
- Certificate of producer, §63-2703.
- Collection, §63-2708.
- Compliance by subsequent owners, §63-2706.

Corporations.

- Statement of electric generating companies, §63-2701.
- Distribution of revenue, §63-2702.
- False statements or affidavits.
- Penalties, §63-2707.

Forms.

- Certificate of producers, §63-2703.

Interest.

- Delinquent payment, §63-2702.
- Excess payment, §63-2702A.

Irrigation.

- Exemption of electricity for pumping water for irrigation purposes, §63-2705.
- Judgments against state, §63-2708.

ELECTRIC POWER —Cont'd**License tax on electricity —Cont'd**

Kilowatt hours produced.

Statement, §63-2704.

Meters.

Measuring kilowatt hours produced, §63-2704.

Partnerships.

Statement to state tax commission, §63-2701.

Payment, §63-2702.

Delinquent payments.

Interest on delinquencies, §63-2702.

Refund or credit.

Excess payment, §63-2702A.

Penalties.

False statements or affidavits, §63-2707.

Producers.

Defined, §63-2701.

Refunds.

Actions against state for, §63-2708.

Separability of provisions, §63-2711.

Statement of electric generating companies, §63-2701.

Statement of kilowatt hours produced, §63-2704.

Subsequent owners.

Compliance, §63-2706.

Meters.

Statement of kilowatt hours produced.

License tax on electricity, §63-2704.

Partnerships.

License tax on electricity.

Statement of electric generating company, §63-2701.

Penalties.

License tax on electricity.

False statement or affidavit, §63-2707.

Sales tax.

Equipment used in alternative method of generating electricity.

Rebate, §63-3622QQ.

Taxation.

Cooperative electrical associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE ELECTRICAL ASSOCIATIONS.

ELECTRONIC FUNDS**TRANSFERS.**

Taxation, §63-115.

EMPLOYMENT SECURITY.**Income tax withholding and**

employment security taxes

joint administration, §63-3035B.

Taxation.

Joint administration of employment security taxes and income tax withholding, §63-3035B.

EPILEPSY.**Treatment and care of**

developmentally disabled,

§§66-401 to 66-414.

See DEVELOPMENTAL DISABILITIES.

ESTIMATED TAX.**Corporate income tax.**

Interest.

Unpaid or underpaid tax, §63-3046A.

Payment, §63-3036A.

EVIDENCE.**Property taxes.**

Equalization of assessments.

Production of evidence, §63-505.

Reproduction of records, §63-218.

Tax deeds.

Effect as evidence, §63-1008.

Possession under tax deed conclusive as to regularity of proceedings, §63-1011.

Taxation.

Taxpayer bill of rights.

Revenue officer violations, §63-4011.

EXAMINATIONS.**Income tax.**

Unnecessary or unreasonable examinations, §63-3042.

Mentally ill.

Hospitalization of mentally ill.

Involuntary commitment.

Physical and mental examinations for newly admitted patients, §66-333.

Veterans.

Addition of points to competitive examination ratings, §65-504.

EXCISE TAXES.

Fuels tax, §63-2431.

EXEMPTIONS.**Homesteads.**

Illegal drug stamp tax.

Inapplicability of exemption, §63-4208.

F**FEDERAL AID.****Tax commission.**

Authority as to, §63-106.

FEES.**Cigarettes and tobacco products taxes.**

Permits.

Wholesalers, §63-2503.

Fuels tax.

Special fuels in gaseous form.

Annual fee in lieu of excise tax,
§63-2424.

Personal property.

Taxation.

Delinquent taxes.

Fees allowed for warrants of
distrain, §63-1013.

Property taxes.

Taxing districts.

Advertisement of and hearing on
fee increases, §63-1311A.

Services provided by, §63-1311.

Taxing districts.

Authority to impose fees for services,
§63-1311.

Advertisement of and hearings on
fee increases, §63-1311A.

Veterans.

Discharge papers.

Recording or indexing without fee,
§65-301.

Parties authorized to request services
without fee, §65-302.

Performance of services without fee,
§65-303.

FELONIES.**Cigarette and tobacco products taxes.**

Forging or counterfeiting stamps,
§63-2512.

Income tax, §63-3075.

Divulging confidential information,
§63-3076.

Mine profit taxation.

Confidentiality of information.

Penalty for disclosure, §63-2807.

Taxation.

Cigarette and tobacco products taxes.

Forging or counterfeiting stamps,
§63-2512.

Income tax.

Divulging confidential information,
§63-3076.

Penalties for violations, §63-3075.

FERRIES.**Toll ferries.**

Licenses, §63-2305.

FIDUCIARIES.**Definitions.**

Income tax, §63-3007.

Income tax.

Defined, §63-3007.

Information returns, §63-3037.

Returns.

Required, §63-3030.

Property taxes.

Listing of property by fiduciaries,
§63-306.

FINES AND OTHER PENALTIES.**Cigarette and tobacco products taxes.**

Criminal penalties for violations,
§63-2525.

Cooperative electrical associations.

Gross earnings tax.

Delinquent payment, §63-3504.

Electric power.

License tax on electricity.

False statement or affidavit,
§63-2707.

Fuels tax.

Civil penalties, §63-2427C.

Cumulative penalties, §63-2443.

Distribution of revenues, §63-2412.

Doing business without license,
§§63-2433, 63-2443.

Failure to display special fuel
permits, §63-2441.

Failure to pay penalties, §63-2443.

Violations, §63-2443.

Illegal drug stamp tax, §63-4207.

Disclosure of stamp purchases and
redetermination, §63-4206.

Distribution of revenues, §63-4209.

Presumptions and burden of proof.

Validity and correctness of
penalties, §63-4208.

Income tax.

Attempt to evade or defeat tax,
§63-3078.

Authority of commission to
compromise penalties, §63-3047.

Divulging confidential information,
§63-3076.

Failure to collect and payover tax,
§63-3078.

Partnerships.

Failure to file partnership return,
§63-3046B.

FINES AND OTHER PENALTIES

—Cont'd

Income tax —Cont'd

Release by commission, §63-3055.

Violations, §63-3075.

Withholding accounts.

Prohibited acts, §63-3035C.

License taxes.Failure to comply with provisions,
§63-2309.**Mentally ill.**

Hospitalization of mentally ill.

Violation of patients' rights,
§66-349.**Mines and mining.**

Taxation of profits of mines.

Disclosure of confidential
information, §63-2807.

False statement, §63-2806.

Property taxes.

Tax deeds.

Notice of pending issue.

Affidavit of compliance.

False swearing, §63-1005.

Public works contractors.

Taxation.

Payment of taxes.

Officers of contracting units
failing to comply with or
violating provisions,
§63-1505.**Sales tax.**Applied in same manner as income
tax, §63-3634.Retail purchases exempt from or
not subject to tax.

Violations, §63-3622.

Promoter sponsored events,
§63-3620C.**FIREFIGHTERS' RETIREMENT
FUND.****Income tax.**

Retirement benefits.

Deduction, §63-3022A.

FISH AND GAME.**Sales tax.**

Exemptions.

Hunting or shooting sports,
§63-3622SS.**FOOD.****Sales tax.**

Retail food stores.

Petitions.

Relief from responsibility of
retaining invoices of nontax
sales, §63-3624.**FOOD BANKS.****Sales tax.**Exemption of nonprofit organizations,
§63-3622O.

Use tax, §63-3621.

FOOD STAMPS.**Sales tax.**Purchases made with federal food
stamps.

Exempted purchases, §63-3622FF.

FORESTS AND FORESTRY.**Appraisers and appraisals.**Taxation of forest lands and forest
products.Land parcels of less than five
contiguous acres, §63-1702.**Definitions.**Taxation of forest lands and forest
products, §63-1701.**Sales tax.**

Forest protective associations.

Exemption of nonprofit
organizations, §63-3622O.

Use tax, §63-3621.

Taxation.

Administration of act.

Examination of records, §63-1707.

Assets.

Large-size forest tracts.

Inventory not included as part of
total forest assets, §63-1705.

Average annual net wood production.

Defined, §63-1701.

Bare land value.

Defined, §63-1701.

Buildings.

Appraisal of buildings and
improvements located on forest
lands of less than five acres,
§63-1702.Improvements in buildings located
on large-size forest tracts,
§63-1705.

Commonly owned tracts.

Large-size forest tracts, §63-1704.

Definitions, §63-1701.

Designation of certain forest lands
for taxation, §63-1703.

Destroyed forest lands.

Eligibility for reduction in value,
§63-1705.

Exemptions from yield tax, §63-1708.

Forest.

Defined, §63-1701.

Forest land.

Defined, §63-1701.

FORESTS AND FORESTRY —Cont'd

Taxation —Cont'd

- Forest landowners.
 - Defined, §63-1701.
 - Elections, §63-1703.
- Forest products.
 - Defined, §63-1701.
- Forest products or timber harvested from investment lands.
 - Yield tax, §63-1703.
- Forest value.
 - Defined, §63-1701.
- Lands of less than five acres.
 - Appraisal, assessment and taxation as real property, §63-1702.
- Large-size forest tracts.
 - Appraisal, assessment and taxation as real property, §§63-1704, 63-1705.
- Buildings and improvements located on lands, §63-1705.
- County assessor to furnish capitalization rate, stumpage value and agricultural-related income, §63-1705.
- Inventory of timber and other forest products not included as part of total forest assets, §63-1705.
- Market value.
 - Determination of market value for assessment purposes, §63-1705.
- Owners.
 - Certain lands to be designated for taxation, §63-1703.
- Property exempt from taxation, §63-1708.
- Rates.
 - Determination, §63-1706.
- Records.
 - Examination of records, §63-1707.
- Reduction in value.
 - Forest lands eligible, §63-1705.
- Sales tax.
 - Forest protective associations.
 - Exemption of nonprofit organizations, §63-3622O.
- Stumpage owners.
 - Defined, §63-1701.
- Stumpage value.
 - Defined, §63-1701.
- Tax yield on applicable forest products, §63-1706.
- Timber.
 - Defined, §63-1701.

FORESTS AND FORESTRY —Cont'd

Taxation —Cont'd

- Timber severed from lands.
 - Forest products yield tax, §63-1706.
- Use tax.
 - Forest protective associations.
 - Exception of nonprofit organizations, §63-3621.
 - Yield tax rate, §63-1706.
- Use tax.**
 - Forest protective associations.
 - Exemption of nonprofit organizations, §63-3621.
- FORFEITURES.**
- Cigarette and tobacco products taxes.**
 - Cigarettes in violation of act, §63-2526.
- FORGERY AND COUNTERFEITING.**
- Cigarette and tobacco products taxes.**
 - Penalty for violation, §63-2512.
- Fuels tax.**
 - Special fuels permits.
 - Counterfeit permits, §63-2441.
- FORMS.**
- Declarations for mental health treatment, §66-613.**
- Mental health treatment.**
 - Declarations for, §66-613.
- Sales tax.**
 - Sellers' permits, §63-3620.
- FRANCHISES.**
- Income tax.**
 - Franchise tax not repealed, §63-3079.
 - Tax on franchise, §63-3025A.
- Property taxes.**
 - Exemption of intangible personal property, §63-602L.
- FRATERNAL BENEFIT SOCIETIES.**
- Income tax.**
 - Exemptions from tax, §63-3025B.
- Taxation.**
 - Exemptions from taxation, §63-3025B.
- FRAUD.**
- Income tax.**
 - False or fraudulent returns.
 - Limitation upon issuance of notice of deficiency and collection of tax, §63-3068.
- Revenue officers.**
 - Tax collection, §63-4005.

FRAUD —Cont'd

Sales tax.

Returns.

Limitation period upon assessment and collection not applicable, §63-3633.

Tax collection, §63-4005.

Telephones.

Tax collection, §63-4005.

FRUITS.

Income tax.

Fruit growers' association.

Organizations exempt from tax, §63-3025B.

Property taxes.

Exempt property.

Fruits held for human consumption, and seeds, shipped out of state, §63-602S.

Taxation.

Exemptions from taxation.

Fruit growers' association, §63-3025B.

FUELS TAX.

Actions.

Doing business without license.

Civil action to enjoin, §63-2432.

Administration of chapter.

Exchange of information agreements, §63-2442.

Interstate agreements, §63-2442A.

State tax commission to enforce provisions, §63-2427.

Aircraft engine fuel.

Deductions authorized licensed distributors, §63-2407.

Defined, §63-2401.

Distribution of revenue, §63-2412.

Distributors.

Payment of excise tax, §63-2408.

Instate pipeline terminal and storage report, §63-2437.

Method of measurement of gallons received, §63-2404.

Payment of tax, §§63-2405, 63-2408.

Payment of tax by distributor, §63-2408.

Purchase by retail dealers, §63-2411.

Refunds, §63-2410.

Gasoline other than aircraft engine fuel.

Used in aircraft engines, §63-2408.

Reports of importations by carriers, §63-2436.

Taxes imposed by chapter in lieu of all other excise taxes, etc., §63-2431.

FUELS TAX —Cont'd

Biodiesel blends.

Deductions authorized licensed distributor, §63-2407.

Defined, §63-2401.

Bonds, surety.

Distributors, §63-2428.

Carriers.

Reports of importation by carriers, §63-2436.

Commercial motorboats.

Defined, §63-2401.

Cooperative agreements between jurisdictions, §63-2442A.

Credits.

Payment of special fuels tax directly to vendor, §63-2423.

Dealers.

Retail dealers.

Defined, §63-2401.

Purchase of gasoline and/or aircraft engine fuel, §63-2411.

Deductions.

Authorized deductions of licensed distributors, §63-2407.

Definitions, §63-2401.

Aircraft engine fuel, §63-2401.

Bonds, §63-2401.

Commercial motorboats, §63-2401.

Commission, §63-2401.

Distributors, §63-2401.

Gasohol, §63-2401.

Gasoline, §63-2401.

Highways, §63-2401.

Licensed distributors, §63-2401.

Motor fuel, §63-2401.

Motor vehicles, §63-2401.

Persons, §63-2401.

Qualified one-way rental trucks, §63-2401.

Recreational vehicles, §63-2401.

Retail dealers, §63-2401.

Special fuels, §63-2401.

Special fuels dealers, §63-2401.

Special fuels users, §63-2401.

Use, §63-2401.

Distribution of tax revenues, §63-2412.

Excise tax on special fuels, §63-2418.

Distributors.

Bonds, surety.

Amount of bond, §63-2428.

Filing bond with commission, §63-2428.

Waiver, §63-2428.

Deductions authorized, §63-2407.

Defined, §63-2401.

FUELS TAX —Cont'd**Distributors —Cont'd**

- Doing business without license.
- Penalties, §§63-2433, 63-2443.
- Failure to collect or remit, §63-2406.
- Gaseous fuels.
 - Licenses and reports, §63-2427B.
- Licensed distributors.
 - Defined, §63-2401.
- Licenses, §63-2427A.
 - Revocation or cancellation, §63-2430.
- Lists of licensed distributors.
 - Commission to furnish each licensed distributor, §63-2427A.
- Records.
 - Required records, §63-2429.
- Reports, §63-2406.
- Unpaid taxes.
 - Application of unpaid tax liability against bond, §63-2428.

Doing business without license.

- Civil action to enjoin, §63-2432.
- Misdemeanor, §§63-2433, 63-2443.
- Penalty, §§63-2433, 63-2443.

Dyed fuel.

- Defined, §63-2401.
- Prohibited for use on highway, §63-2425.

Enforcement of provisions,
§63-2434.**Exchange of information agreements,** §63-2442.

- Interstate agreements, §63-2442A.

Excise taxes.

- Taxes imposed by chapter in lieu of all other excise taxes, §63-2431.

Failure to file statements required by chapter, §63-2443.**Fees.**

- Special fuels in gaseous form.
 - Annual fee in lieu of excise tax, §63-2424.

Forgery and counterfeiting.

- Special fuels permits.
 - Counterfeit permits, §63-2441.

Gaseous fuels.

- Distributors.
 - Licenses and reports, §63-2427B.
- Fee in lieu of excise tax, §63-2424.
 - Permits, §63-2424.
- Method used for converting measurement of fuel to equivalent gallons, §63-2424.

Gasohol.

- Defined, §63-2401.

FUELS TAX —Cont'd**Gasoline.**

- Deductions authorized licensed distributor, §63-2407.
- Defined, §63-2401.
- Distribution of revenue, §63-2412.
- Instate pipeline terminal and storage report, §63-2437.
- Method of measurement of gallons received, §63-2404.
- Payment of tax, §63-2405.
- Purchase by retail dealers, §63-2411.
- Refund of gasoline tax procedure, §63-2410.
- Reports of importation by carriers, §63-2436.
- Taxes imposed in lieu of all other excise taxes, etc., §63-2431.

Highways.

- Defined, §63-2401.
- Returns and payment of use tax by consumers, §63-2421.

Imposition.

- Gasoline and/or aircraft engine fuel received, §63-2405.

Indians.

- Tribal agreements.
 - Effect, §63-2444.

Injunctions.

- Doing business without license.
 - Civil action to enjoin, §63-2432.

Interest.

- Distribution of revenue, §63-2412.
- Refunds or credits, §63-2410.
 - Payment of special fuels tax directly to vendor, §63-2423.

International fuel tax agreement,
§63-2442A.**International fuel tax agreement license,** §§63-2438 to 63-2443.**Licensed distributors.**

- Defined, §63-2401.

Licenses.

- Distributors, §63-2427A.
 - Gaseous fuels distributors, §63-2427B.
- Doing business without license.
 - Civil action to enjoin, §63-2432.
 - Penalty, §§63-2433, 63-2443.
- International fuel tax agreement license, §63-2438.
 - Exemptions, §63-2440.
 - Reports and payment by holders, §63-2439.
- Misdemeanors.
 - Doing business without license, §§63-2433, 63-2443.

FUELS TAX —Cont'd**Licenses —Cont'd**

Revocation or cancellation,
§§63-2427C, 63-2430.

Suspension, §63-2427C.

Limitation of actions.

Claims for refunds, §63-2410.

Refunds or credits.

Payment of special fuels tax
directly to vendor, §63-2423.

Lists of licensed distributors.

Commission to furnish, §63-2427A.

Measurement of fuel.

Special fuels in gaseous form,
§63-2424.

Misdemeanors.

Doing business without license,
§§63-2433, 63-2443.

Special fuels permits, §63-2441.

Violating provisions of title,
§63-2443.

Motor fuel.

Defined, §63-2401.

Motor vehicles.

Defined, §63-2401.

Payment, §63-2402.

Use tax by consumers, §63-2421.

Penalties.

Civil penalties, §63-2427C.

Cumulative penalties, §63-2443.

Distribution of revenues, §63-2412.

Doing business without license,
§§63-2433, 63-2443.

Failure to display special fuel
permits, §63-2441.

Failure to pay penalties, §63-2443.

Violations, §63-2443.

Permits.

International fuel tax agreement
license, §63-2438.

Exemptions, §63-2440.

Reports and payment by holders,
§63-2439.

Special fuels permits.

Counterfeit permit, §63-2441.

Failure to display.

Penalties, §63-2441.

Special fuels in gaseous form.

Fee in lieu of excise tax,
§63-2424.

Pipelines.

Reports.

Instate pipeline terminal and
storage report, §63-2437.

Property taxes.

Taxes imposed by chapter in lieu of
all other property taxes imposed
on gasoline, etc., §63-2431.

FUELS TAX —Cont'd**Railroads.**

Reports of importations by carriers,
§63-2436.

Rate of tax.

Gasoline and/or aircraft engine fuel
received, §63-2405.

Receipt of motor fuel, §63-2403.**Records.**

Required records, §63-2429.

Special fuels dealers, §63-2429.

Recreational vehicles.

Defined, §63-2401.

Refunds.

Aircraft engine fuel.

Gasoline other than aircraft engine
fuel, §63-2408.

Duplicate taxes assessed outside of
state, §63-2410.

Gasoline, §63-2410.

Payment of special fuels tax directly
to vendor, §63-2423.

Reports.

Distributors, §63-2406.

Licensed gaseous fuels distributor,
§63-2427B.

Importations by carriers, §63-2436.

Instate pipeline terminal and storage
report, §63-2437.

Retail dealers.

Defined, §63-2401.

Purchase of gasoline and/or aircraft
engine fuel, §63-2411.

Returns.

Consumers, §63-2421.

Rules and regulations.

Adoption and enforcement by tax
commission, §63-2427.

Sales tax.

Motor fuels subject to tax exempted
from chapter, §63-3622C.

Sentencing.

Violations of title, §63-2443.

Special fuels.

Defined, §63-2401.

Distribution of revenue, §63-2418.

Gaseous fuels.

Fee in lieu of excise tax, §63-2424.

Permits, §63-2424.

Method of converting measurement
of fuel, §63-2424.

International fuel tax agreement
license, §63-2438.

Exemptions, §63-2440.

Reports and payment by holders,
§63-2439.

Permits.

Counterfeit permits, §63-2441.

FUELS TAX —Cont'd**Special fuels —Cont'd****Permits —Cont'd**

Failure to display permit.

Penalty, §63-2441.

Reports of importations by carriers,
§63-2436.Returns and payment of use tax by
consumers, §63-2421.**Special fuels dealers.**

Defined, §63-2401.

Doing business without license.

Penalties, §§63-2433, 63-2443.

Licenses.

Revocation or cancellation,
§63-2430.

Records.

Required records, §63-2429.

Special fuel users.

Defined, §63-2401.

**State money held in trust for state
of Idaho, §63-2435.****State tax commission.**

Enforcement provisions, §63-2434.

Licenses.

Revocation or cancellation,
§63-2430.**Statute of limitations.**

Claims for refunds, §63-2410.

Refunds or credits.

Payment of special fuels tax
directly to vendor, §63-2423.**Tax constitutes debt owing from
user to state of Idaho, §63-2402.****Tax in lieu of all other taxes
imposed, §63-2431.****Tribal agreements.**

Effect, §63-2444.

Trusts and trustees.Taxes are state money and held in
trust for state of Idaho,
§63-2435.**Untaxed fuel.**Prohibited for use on highway,
§63-2425.**Use.**

Defined, §63-2401.

Violations.

Penalties, §63-2443.

Weights and measures.Method of measurement of gallons
received, §63-2404.**FUNCTIONALLY LIMITED
PERSONS.****Treatment and care of
developmentally disabled,
§§66-401 to 66-414.**See DEVELOPMENTAL
DISABILITIES.**FUNDS.****Asylums.**State asylum and sanitarium fund
for patients, §§66-501 to 66-503.

See MENTALLY ILL.

**Charitable institutions earnings
reserve fund, §66-1104.****Charitable institutions income
fund, §66-1105.****Charitable institutions permanent
endowment fund, §66-1103.****Income tax.**

State refund account, §63-3067.

**Mental hospital earnings reserve
fund, §66-1101A.****Mental hospital income fund,
§66-1102.****Mental hospital permanent
endowment fund, §66-1101.****Mentally ill.**State asylum and sanitarium fund
for patients, §§66-501 to 66-503.

See MENTALLY ILL.

Sanitariums.State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**School for the deaf and blind fund,
§66-1108.****State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**

See MENTALLY ILL.

State hospitals.State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**Taxation.**

Prepayment of taxes.

Local impact fund, §63-1605.

Tax anticipation note redemption
fund, §63-3203.**Trusts and trustees.**State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**Tuberculosis.**

Idaho tuberculosis hospital.

Acceptance of funds authorized,
§66-1002.**Veterans cemetery maintenance
fund, §65-107.****Veterans transportation fund,
§65-208.****FUNERALS.****Sales tax.**

Exemptions.

Funeral services exempt,
§63-3622U.

G

GASOLINE.

Fuels tax, §§63-2401 to 63-2444.

See **FUELS TAX.**

GEO THERMAL RESOURCES.**Income tax.**

Deduction for alternative energy device at residence, §63-3022C.

G.I. BILL OF RIGHTS.**Veterans.**

Authority to contract, §65-509.

GIFTS.**Gooding College.**

Donation of land for Idaho tuberculosis hospital, §66-1001.

Tuberculosis.

Idaho tuberculosis hospital.

Donation of property belonging to Gooding College of Methodist Episcopal Church, §66-1001.

Universities and colleges.

Gooding College.

Donation of property for Idaho tuberculosis hospital, §66-1001.

GOODING COLLEGE.**Tuberculosis.**

Donation of property for Idaho tuberculosis hospital, §66-1001.

GOODWILL.**Property taxes.**

Exemption of intangible personal property, §63-602L.

GOVERNOR.**Taxation.**

Board of tax appeals.

Removal of members, §63-3805.

Multistate tax commission.

Appointment of members, §63-3703.

Veterans.

Veterans affairs commission.

Power to discontinue commission, §65-201.

GROSS EARNINGS.**Tax on gross earnings.**

Cooperative electrical associations, §§63-3501 to 63-3506.

See **COOPERATIVE ELECTRICAL ASSOCIATIONS.**

Cooperative natural gas associations, §§63-3501 to 63-3506.

See **COOPERATIVE NATURAL GAS ASSOCIATIONS.**

GUARDIAN AD LITEM.**Mentally ill.**

Hospitalization of mentally ill.

Involuntary commitment.

Appointment of guardian ad litem, §66-329.

GUARDIANS.**Disabled persons.**

Treatment and care of developmentally disabled.

Appointment of guardians, §66-404.

Notice, §66-404.

Petition for reexamination of order of guardianship or commitment, §66-408.

Mentally ill.

Hospitalization of mentally ill.

Appointment of guardian, §§66-322, 66-355.

Notice.

Disabled persons.

Treatment and care of developmentally disabled.

Appointment of guardian, §66-404.

H

HABEAS CORPUS.**Mental illness.**

Hospitalization of mentally ill.

Writ of habeas corpus, §66-347.

HARASSMENT.

Taxpayers' bill of rights, §63-4004.

HARDSHIP.**Property taxes.**

Cancellation, §63-711.

HEALTH.**Board of health and welfare.**

Idaho tuberculosis hospital.

Powers and duties of charitable institutions commission transferred to department of public health then to board of health and welfare, §66-1007.

Mentally ill.

Security medical facilities, §§66-1301 to 66-1318.

Tuberculosis.

Idaho tuberculosis hospital,

§§66-1001 to 66-1007.

See **TUBERCULOSIS.**

HEALTH AND WELFARE DEPARTMENT.

Idaho tuberculosis hospital.

Powers and duties of charitable institutions commission transferred to department then to board of health and welfare, §66-1007.

HEALTH COVERAGE.

Income tax deductions.

Health insurance costs, §63-3022P.

Taxation.

Income tax deductions, §63-3022P.

HEARING AIDS.

Sales tax exemption of parts and accessories, §63-3622N.

HEARINGS.

Detention.

Mentally ill.
Hospitalization of mentally ill.
Detention without hearing, §66-326.

Disabled persons.

Treatment and care of developmentally disabled.
Judicial procedure for commitment to director, §66-406.

Mentally ill.

Hospitalization of mentally ill.
Detention without hearing, §66-326.
Involuntary commitment, §66-329.
Detention pending commitment proceedings.
Time within which hearing must be held, §66-326.
Outpatient commitment, §66-339B.

Sales tax.

Sellers.
Permits.
Revocation, §63-3620.

Taxation.

Board of tax appeals, §§63-3807 to 63-3810.
Income tax deficiencies, §63-3045.
Decisions of the commission, §63-3045B.
Prepaid taxes.
Hearing by board of county commissioners, §63-1603.

HEAT PUMPS.

Income tax.

Alternative energy devices at residence.
Deductions allowed, §63-3022C.

HIGHWAYS.

Fuels tax.

Defined, §63-2401.

HOME FOR VETERANS, §§66-901 to 66-907.

See VETERANS.

HOMEOWNER'S EXEMPTION.

Property taxes.

Residential improvements.
Improvements never occupied, §63-602W.

HOMESTEADS.

Illegal drug stamp tax.

Exemptions.
Inapplicability of exemption, §63-4208.

Property taxes.

Exempt property, §63-602G.

HOSPITALS.

Mentally ill.

Hospitalization of mentally ill, §§66-317 to 66-355.
See MENTALLY ILL.
State hospitals, §§66-114 to 66-119.
See MENTALLY ILL.

Property taxes.

Exempt property, §63-602D.

Sales tax.

Exemption of nonprofit organizations, §63-3622O.

State of Idaho.

State hospitals, §§66-114 to 66-119.
See MENTALLY ILL.

State schools and hospitals,

§§66-114 to 66-119.

Tuberculosis.

Idaho tuberculosis hospital, §§66-1001 to 66-1007.
See TUBERCULOSIS.

Use tax.

Exemption of nonprofit organizations, §63-3621.

HOUSEHOLD GOODS.

Property taxes.

Exempt property, §63-602I.

HUSBAND AND WIFE.

Income tax.

Joint returns.
Additional tax required when filing, §63-3082.
Election to file joint return for federal purposes, §63-3031.
Imposition of tax, §63-3024.
Marriage penalty adjustment, §63-3022N.

HUSBAND AND WIFE —Cont'd**Income tax —Cont'd****Joint returns —Cont'd**

Overpayments on joint returns,
§63-3041.

I**IDAHO CORPORATE****HEADQUARTERS INCENTIVE**

ACT OF 2005, §§63-2901 to
63-2910.

IDAHO INCOME TAX ACT,

§§63-3001 to 63-3088.

See **INCOME TAX**.

**IDAHO NATIONAL ENGINEERING
AND ENVIRONMENTAL
LABORATORY.****Sales tax.**

Exemptions, §63-3622BB.

IDAHO SALES TAX ACT, §§63-3601
to 63-3641.

See **SALES TAX**.

**IDAHO SCHOOL FOR THE DEAF
AND THE BLIND.**

Fund, §66-1108.

IDAHO SECURITY MEDICAL

PROGRAM ACT, §§66-1301 to
66-1318.

See **MENTALLY ILL**.

IDAHO SMALL EMPLOYER

INCENTIVE ACT, §§63-4401 to
63-4409.

**IDAHO STATE SCHOOL AND
HOSPITAL.**

State hospitals generally, §§66-114
to 66-119.

See **MENTALLY ILL**.

IDAHO VETERANS' HOME,

§§66-901 to 66-907.

See **VETERANS**.

IDAHO YOUTH RANCH.**Income tax credit for**

rehabilitation facilities,
§63-3029C.

IFTA.**International fuel tax agreement**

license, §§63-2438 to 63-2443.

ILLEGAL DRUG STAMP TAX,

§§63-4201 to 63-4211.

Administration, §63-4208.

Applicable law, §63-4208.

ILLEGAL DRUG STAMP TAX

—Cont'd

Assessments.

Jeopardy assessment, §63-4208.

Burden of proof.

**Incorrectness or invalidity of taxes or
penalties assessed**, §63-4208.

Citation of act.

Short title, §63-4201.

Commission.

Administration of tax, §63-4208.

Confidentiality of information.

**Stamp purchases and
redetermination**, §63-4206.

Controlled substances.

Defined, §63-4202.

Tax on, §63-4203.

Dealers.

Stamps.

Affixation, §63-4208.

Generally, §63-4204.

Definitions, §63-4202.**Distribution of revenues**, §63-4209.**Exemptions.**

Claims, §63-4211.

**Lawful possession of controlled
substance**, §63-4210.

Homestead exemption.

Inapplicability, §63-4208.

Immunities.

Criminal prosecution, §63-4206.

Imposition of tax, §63-4203.**Interest.**

Distribution of revenues, §63-4209.

Jeopardy assessment, §63-4208.**Lawful possession.**

Exemption from tax, §63-4210.

Limitation of actions.

Criminal prosecutions, §63-4207.

Penalties, §63-4207.

**Disclosure of stamp purchases and
redetermination**, §63-4206.

Distribution of revenues, §63-4209.

Presumptions and burden of proof.

**Validity and correctness of
penalties**, §63-4208.

Presumptions.

**Validity and correctness of taxes and
penalties**, §63-4208.

Rate of tax, §63-4203.**Revenues.**

Distribution, §63-4208.

Stamps.

Affixation, §63-4205.

Generally, §63-4204.

Purchase, §63-4204.

Required for possession, §63-4204.

ILLEGAL DRUG STAMP TAX

—Cont'd

State tax commission.

Definition of "commission," §63-4202.

Stamps.

Provided and sold by commission,
§63-4204.**Title of act.**

Short title, §63-4201.

IMMUNITIES.**Declarations for mental health treatment.**

Agents acting in good faith, §66-606.

Physicians or providers
administering mental health
treatment, §66-611.**Illegal drug stamp tax.**

Criminal prosecution, §63-4206.

Mentally ill.

Declarations for treatment.

Agents acting in good faith,
§66-606.Physicians or providers
administering, §66-611.**IMPORTS AND EXPORTS.****Sales tax.**

Exemptions.

Out-of-state shipments, §63-3622Q.

IMPROVEMENTS.**Property taxes.**

Assessments.

Exempt and railroad rights-of-way
lands, §63-309.

Defined, §63-201.

Exempt property.

Residential improvements.

Business inventory exemption
for residential improvements
never occupied, §63-602W.

Lien of property taxes.

Destroying lien by removing
improvements.

Prohibited acts, §63-206.

Occupancy tax.

Exemptions, §63-602Z.

INCAPACITATED PERSONS.**Developmental disabilities.**Treatment and care of
developmentally disabled,
§§66-401 to 66-414.**Mentally ill.**Hospitalization of mentally ill,
§§66-317 to 66-355.See **MENTALLY ILL.****INCAPACITATED PERSONS**

—Cont'd

**Treatment and care of
developmentally disabled,**
§§66-401 to 66-414.See **DEVELOPMENTAL
DISABILITIES.****INCOME TAX, §§63-3001 to 63-3088.****Accounts and accounting.**Designation of deposits in trust
account, §63-3067B.Sunsetting designations,
§63-3067C.

State refund account, §63-3067.

Actions.

Actions against state of Idaho.

State tax commission made party
defendant, §63-3074.Collection of unpaid tax or deficiency,
§63-3050.Commencement of actions by state
tax commission to collect taxes,
interest, penalties, etc.Other remedies preserved,
§63-3064.

Liens.

Action to enforce lien, §63-3056.

Additional to other income taxes,
§63-3084.**Adjusted or compromised cases.**

Closing agreements, §63-3048.

Adjustments to taxable income,
§63-3022.Property acquired after September
10, 2001, §63-3022O.**Administration of act.**Duty of state tax commission,
§63-3038.**Adoption expenses.**

Deductions, §63-3022I.

Aged persons.Household deductions for dependents
sixty-five years of age or older,
§63-3022E.Payment for dependents sixty-five
years of age or older, §63-3025D.**Agriculture.**Organizations exempt from tax
imposed by act.

Farmer's association, §63-3025B.

Withholding.

State withholding tax for farmers,
§63-3036.**Alternative energy devices.**

Deduction, §63-3022C.

Defined, §63-3022C.

Anatomical gifts.Tax credit for live organ donation
expenses, §63-3029K.

INCOME TAX —Cont'd**Annuities.**

Information returns, §63-3037.

Appeals.

Payment of tax or deficiency required, §63-3049.

Redeterminations by commission.

Review in district court, §63-3049.

Assessments.

Jeopardy assessments, §63-3065.

Attorney general.

State tax commission.

Legal counselor and advisor of commission, §63-3066.

Automatic extension of time for filing return, declaration, statement or other document, §63-3033.**Banks and financial institutions.**

Federal land banks.

Organizations exempt from tax, §63-3025B.

Beneficiary of trust or of state.

Distributable net income.

Adjustments to taxable income, §63-3022.

Biofuel infrastructure.

Credit for capital investment in, §63-3029M.

Blind persons.

Persons exempt from tax, §63-3086.

Broadband equipment.

Credit for investment in, §63-3029I.

Buildings.

Alternative energy devices at residence.

Deductions allowed, §63-3022C.

Existing buildings.

Defined, §63-3022B.

Insulation of residences.

Deduction for insulation, §63-3022B.

Burden of proof.

Water's edge election, §63-3027D.

Business income.

Defined, §63-3027.

Capital gains.

Corporations.

Computing taxable income, §§63-3027, 63-3027A.

Deduction, §63-3022H.

Capital investments.

Tax credit allowed, §63-3029B.

Biofuel infrastructure, §63-3029M.

Charities.

Credit for charitable contributions, §63-3029A.

Rehabilitation facilities, §63-3029C.

INCOME TAX —Cont'd**Cigarette and tobacco products taxes.**

Applicability of additions, penalties and requirements provided by income tax act, §63-2562.

Applicability of collection and enforcement procedure, §63-2563.

Citation of act, §63-3001.**Collection.**

Jeopardy assessments.

Institution of collection procedures, §63-3065.

Period of limitation upon collection of tax, §63-3068.

Procedures, §63-3087.

Commission decisions.

Deficiency payments, §63-3045B.

Judicial review, §63-3049.

Commissioner of the internal revenue of the United States.

Information furnished certain officials, §63-3077.

Compensation.

Defined, §63-3027.

Compromise and settlement.

Adjusted or compromised cases.

Closing agreements, §63-3048.

Authority of commission to compromise penalties, §63-3047.

Computing, §63-3026.

Part-year or nonresident individuals, trusts and estates, §63-3026A.

Confidentiality.

Divulging confidential information, §63-3076.

Information furnished certain officials, §63-3077.

Constables.

Distrain.

Production of books, §63-3062.

Levy or distraint warrant, §63-3059.

Proceedings on levy or distraint, §63-3060.

Construction and interpretation.

Franchise taxes.

Act not construed to repeal, §63-3079.

Taxable income not construed to be property, §63-3080.

Contempt.

Refusal to comply with subpoenas or orders under act, §63-3043.

Copyrights.

Corporations.

Computing taxable income, §63-3027.

INCOME TAX —Cont'd**Corporate headquarters incentive act.**

Capital investment credit, §63-2903.

Limitations, rules and regulations, §63-2906.

New jobs credit, §63-2905.

Real property improvement tax credit, §63-2904.

Recapture of credit for failure to meet criteria, §63-2907.

Corporations.

Adjustments to taxable income, §63-3022.

Apportionment of tax, §63-3027.

Burden of proof.

Water's edge election, §63-3027D.

Capital gains and losses from sales of real property located in state, §63-3027.

Charitable contributions.

Tax credit, §63-3029A.

Compensation.

Payment of compensation in state, §63-3027.

Computing taxable income of corporation, §§63-3027, 63-3027A.

Corporate liquidation distributions.

Information returns, §63-3037.

Credits.

Charitable contributions, §63-3029A.

Definitions, §§63-3006, 63-3027.

Water's edge election, §63-3027B.

Dividends.

Allocation and apportionment, §63-3027.

Water's edge election.

Treatment of dividends, §63-3027C.

Estimated tax.

Interest.

Unpaid or underpaid tax, §63-3046A.

Payment, §63-3036A.

Exemptions.

Corporations exempt from minimum tax, §63-3025C.

Foreign corporations.

Computing taxable income of corporations, §§63-3027, 63-3027A.

Franchise tax, §63-3025A.

Act not construed to repeal, §63-3079.

Imposition of tax, §63-3025.

INCOME TAX —Cont'd**Corporations —Cont'd**

Limited liability companies, §63-3006A.

Nonresident officers, directors and shareholders.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Patent or copyright royalties, §63-3027.

Payroll factor, §63-3027.

Presumptions.

Water's edge election, §63-3027D.

Rents and royalties from real and tangible personal property, §63-3027.

Computation of taxable income of corporations, §63-3027.

Returns.

Persons required to make returns, §63-3030.

Sales factor.

Computing taxable income of corporation, §63-3027.

Tangible personal property.

Computing taxable income, §63-3027.

Taxable income.

Computation, §§63-3027, 63-3027A.

Water's edge election, §§63-3027B to 63-3027E.

Credits.

Amount, §63-3024A.

Biofuel infrastructure.

Capital investment in, §63-3029M.

Broadband equipment investments, §63-3029I.

Capital investments, §63-3029B.

Biofuel infrastructure, §63-3029M.

Charitable contributions, §63-3029A.

Rehabilitation facilities, §63-3029C.

Corporate headquarters incentive act.

Capital investment, §63-2903.

Limitations, rules and regulations, §63-2906.

New jobs, §63-2905.

Real property improvement tax credit, §63-2904.

Recapture of credit for failure to meet criteria, §63-2907.

Education.

Tax credit for charitable contributions, §63-3029A.

INCOME TAX —Cont'd**Credits —Cont'd**

- Exemptions, §63-3024A.
- Incentive income tax investment credit, §63-3029J.
- Interest, §63-3073.
- Libraries.
 - Donations to public libraries and library districts, §63-3029A.
- Limitations period, §63-3072.
- Live organ donation expenses, §63-3029K.
- New employees, §§63-3029E, 63-3029F.
- Nonrefundable credits.
 - Priority, §63-3029P.
- Organ donations.
 - Live organ donation expenses, §63-3029K.
- Overpayments, §§63-3041, 63-3072.
- Postconsumer waste equipment, §63-3029D.
- Postindustrial waste equipment, §63-3029D.
- Priority of credits, §63-3029P.
- Recycling equipment, §63-3029D.
- Refundable credits.
 - Priority, §63-3029P.
- Rehabilitation facilities, §63-3029C.
- Research activities conducted in this state, §63-3029G.
- Small employer incentive act.
 - Capital investments, §63-4403.
 - Limitations, rules and regulations, §63-4406.
 - New jobs, §63-4405.
 - Real property improvements, §63-4404.
 - Recapture of deficiencies, §63-4407.
- Taxes paid in other state or territory, §63-3029.
- When residents entitled to credit, §63-3024A.

Criminal offenses.

- Penalties for violations, §63-3075.

Date tax due and payable, §63-3085.**Decedents' estates.**

- Nonresident individuals who are beneficiaries of trust or estate, §63-3075.
- Election as to taxable income, §63-3022L.
- Rate of tax, §63-3024.
- Returns.
 - Required, §63-3030.
- Tax.
 - Computing of part-year and nonresident estates, §63-3026A.

INCOME TAX —Cont'd**Decedents' estates —Cont'd****Tax —Cont'd**

- Tax imposed on estates, §63-3024.

Declaration of intent, §63-3002.**Deductions.**

- Adoption expenses, §63-3022I.
 - Alternative energy devices at residence, §63-3022C.
 - Capital gains, §63-3022H.
 - Computing tax, effect upon, §63-3026.
 - Developmentally disabled, §63-3022E.
 - Payments in lieu of deductions, §63-3025D.
 - Expenses and interest relating to tax exempt income, §63-3022M.
 - Expenses for household and dependent care services, §63-3022D.
 - Firefighters' retirement fund.
 - Retirement benefits, §63-3022A.
 - Gross income, §63-3022.
 - Health insurance costs, §63-3022P.
 - Household deductions for dependents sixty-five years of age or older, §63-3022E.
 - Insulations of residence, §63-3022B.
 - Japanese-Americans.
 - Reparations for World War II displacement, §63-3022G.
 - Long-term care insurance premiums, §63-3022Q.
 - Marriage penalty adjustment, §63-3022N.
 - Medical savings accounts, §63-3022K.
 - Military affairs.
 - Retirement benefits paid by United States to retired members of military services, §63-3022A.
 - Payment for dependents sixty-five years of age or older, §63-3025D.
 - Policemen's retirement fund.
 - Deduction of retirement benefits, §63-3022A.
 - Restoration of item of gross revenue under federal tax, §63-3022F.
 - Retirement.
 - Deduction of certain retirement benefits, §63-3022A.
 - Technological equipment, §63-3022J.
 - United States.
 - Retirement annuities paid by United States, §63-3022A.
- Deficiencies, §63-3044.**
- Action to collect unpaid tax or deficiency, §63-3050.
 - Nonresidents, §63-3065A.

INCOME TAX —Cont'd**Deficiencies —Cont'd**

Additions to tax in case of deficiency,
§63-3046.

Assessment of tax, §63-3045A.

Commission decisions, §63-3045B.

Distrain.

Authority for distraint and sale on
personal property, §63-3057.

Collection by distraint not
exclusive, §63-3063.

Exempt property, §63-3058.

Levy or distraint warrant,
§63-3057.

Notice of levy and distraint,
§63-3061A.

Proceedings on levy or distraint,
§63-3060.

Production of books, §63-3062.

Successive seizures, §63-3061.

Interest, §63-3045.

Limitations period for issuing notice,
§63-3068.

Nonresidents.

Action to collect unpaid tax or
deficiency, §63-3065A.

Notice of deficiency, §63-3045.

Penalties, §63-3046.

Definitions, §63-3003.

Account holder, §63-3022K.

Adjusted gross income, §63-3011A.

Alternative energy device,
§63-3022C.

Broadband equipment, §63-3029I.

Business income, §63-3027.

Collection.

Recycling equipment credits,
§63-3029D.

Commercial domicile, §63-3027.

Compensation, §63-3027.

Corporate income, §63-3027.

Corporations, §63-3006.

Costs.

Recycling equipment tax credits,
§63-3029D.

Deficiencies, §63-3044.

Dependent.

Medical savings account
deductions, §63-3022K.

Dependent child.

Medical savings account
deductions, §63-3022K.

Depository.

Medical savings account
deductions, §63-3022K.

Disabled, §63-3022A.

Eligible medical expense.

Deductions, §63-3022K.

INCOME TAX —Cont'd**Definitions —Cont'd**

Employees, §63-3018.

Employers, §63-3017.

Existing buildings, §63-3022B.

Farmers, §63-3020.

Fiduciaries, §63-3007.

Gross income, §63-3011.

Human organ.

Tax credits, §63-3029K.

Idaho taxable income, §63-3011C.

Includes and including, §63-3012.

Individuals, §63-3008.

Institutions of higher learning,
§63-3029A.

Insulation, §63-3022B.

Internal revenue code, §63-3004.

Capital investment credits,
§63-3029B.

Live organ donation.

Tax credits, §63-3029K.

Long-term care expenses, §63-3022K.

Medical savings account, §63-3022K.

Net operating loss, §63-3021.

New employees, §63-3029E.

Nonbusiness income, §63-3027.

Nonprofit rehabilitation facilities,
§63-3029C.

Nonresidents, §63-3014.

Nuclear waste.

Recycling equipment tax credits,
§63-3029D.

Paid or incurred and paid or accrued,
§63-3016.

Partnership, §63-3006B.

Part-year residents, §63-3013A.

Persons, §§63-3005, 63-3083.

Postconsumer waste.

Tax credits for equipment,
§63-3029D.

Postindustrial waste.

Tax credits for equipment,
§63-3029D.

Private university, private college,
private community college or
private technical college.

Deductions, §63-3022J.

Product.

Recycling equipment tax credits,
§63-3029D.

Public elementary or public
secondary school.

Deductions, §63-3022J.

Public library or library district.
Deductions, §63-3022J.

Public university, public college,
public community college or
public technical college.

Deductions, §63-3022J.

INCOME TAX —Cont'd

Definitions —Cont'd

- Purchase.
 - Recycling equipment tax credits, §63-3029D.
- Qualified equipment.
 - Recycling equipment tax credits, §63-3029D.
- Qualified investments, §63-3029B.
- Radioactive waste.
 - Recycling equipment tax credits, §63-3029D.
- Residents, §63-3013.
- Return.
 - Credits and refunds, §63-3072.
 - Limitation period for issuing notice of deficiency and collection of tax, §63-3068.
- Revenue-producing enterprise.
 - Capital gains deduction, §63-3022H.
- State, §63-3027.
- Taxable income, §63-3011B.
- Taxable year, §63-3010.
- Taxpayers, §63-3009.
- Technological equipment.
 - Deductions, §63-3022J.
- Transacting business, §63-3023.
- Water's edge election, §63-3027B.
- Widows, §63-3022A.

Department of commerce.

- Agreements for exchange of information and joint administration with department of commerce, §63-3077A.

Department of labor.

- Joint administration of employment security taxes and income withholding.
 - Agreement with state tax commission, §63-3035B.

Dependents.

- Household deductions for dependent sixty-five years of age or older, §63-3022E.
- Payment for dependents sixty-five years of age or older, §63-3025D.

Deposits.

- Disposition of revenue received, §63-3067.

Developmentally disabled.

- Deductions for developmentally disabled persons, §63-3022E.
- Payments in lieu of deductions, §63-3025D.

Disposition of revenue received, §63-3067.

INCOME TAX —Cont'd

Distrain.

- Collection by distraint not exclusive, §63-3063.
- Deficient payments.
 - Distrain on personal property, §63-3057.
- Exempt property from distraint, §63-3058.
- Notice of levy and distraint, §63-3061A.
- Proceedings on levy or distraint, §63-3060.
- Production of books, §63-3062.
- Successive seizure, §63-3061.
- Warrants, §63-3059.

District courts.

- Action to collect unpaid tax or deficiency, §63-3050.
- Appeals to supreme court from judgment of district court, §63-3049.

Division of income for tax purposes act.

- Multistate tax compact, §§63-3701 to 63-3709.
- See TAXATION.

Donations to trust accounts, §§63-3067A to 63-3067C.

Education.

- Credit for charitable contributions, §63-3029A.
- Public broadcast systems foundations.
 - Credits for contributions to, §63-3029A.

Elections.

- Election campaign fund.
 - Designation by individuals, §63-3088.

Employees.

- Defined, §63-3018.
- Withholding.
 - Percentage basis, §63-3035.

Employers.

- Defined, §63-3017.
- Information returns, §63-3037.
- State withholding tax on percentage basis, §63-3035.

Employment security taxes.

- Joint administration with income tax withholding, §63-3035B.

Enforcement of act.

- Procedure, §63-3087.
- Rules and regulations prescribed by commission, §63-3039.

INCOME TAX —Cont'd**Estimated tax.**

Corporations.

Interest.

Unpaid or underpaid tax,
§63-3046A.

Payment, §63-3036A.

Evasion.Penalty for attempt to evade or
defeat tax, §63-3078.**Examinations.**Unnecessary or unreasonable
examinations, §63-3042.**Exemptions.**

Blind persons, §63-3086.

Corporations exempt from minimum
tax, §63-3025C.Credits or refunds claimed for
exemptions, §63-3024A.Organizations exempt from tax
imposed by act, §63-3025B.

Persons exempt from tax, §63-3086.

Property exempt from distraint,
§63-3058.

Public assistance payees, §63-3086.

**Expenses and interest relating to
tax exempt income.**

Deductions, §63-3022M.

**Extension of time for filing returns,
declarations, etc., §63-3033.****Farmers.**

Defined, §63-3020.

Withholding.

State withholding tax for farmers,
§63-3036.**Farmers organizations.**Organization exempt from tax
imposed, §63-3025B.**Federal land banks.**Organizations exempt from tax,
§63-3025B.**Felonies.**Divulging confidential information,
§63-3076.

Penalties for violations, §63-3075.

Fiduciaries.

Defined, §63-3007.

Information returns, §63-3037.

Returns.

Required, §63-3030.

Fines.Divulging confidential information,
§63-3076.

Penalties for violations, §63-3075.

Firefighters' retirement fund.

Retirement benefits.

Deduction, §63-3022A.

INCOME TAX —Cont'd**Fish and game.**Agreement to share information by
department, §63-3077C.**Franchises.**

Franchise tax not repealed, §63-3079.

Tax on franchise, §63-3025A.

Fraternal benefits societies.

Exemptions from tax, §63-3025B.

Fraud.

False or fraudulent returns.

Limitation upon issuance of notice
of deficiency and collection of
tax, §63-3068.**Funeral trusts, §63-3015.****Geothermal resources.**Deduction for alternative energy
device at residence, §63-3022C.**Gross income.**Persons required to make returns of
income, §63-3030.**Handicapped persons.**

Deductions.

Developmentally disabled persons,
§63-3022E.Payments in lieu of deductions,
§63-3025D.**Health insurance costs.**

Deduction, §63-3022P.

Heat pumps.Alternative energy devices at
residence.

Deductions allowed, §63-3022C.

**Household and dependent care
services.**

Deduction for expenses, §63-3022D.

Husband and wife.

Joint returns.

Additional tax required when
filing, §63-3082.Election to file joint return for
federal purposes, §63-3031.

Imposition of tax, §63-3024.

Marriage penalty adjustment,
§63-3022N.Overpayment on joint returns,
§63-3041.**Idaho national engineering
laboratory.**Compensation in form of reasonable
cash fee for performance of
management services for United
States government, §63-3027.**Imposition of individual tax,
§63-3024.****Includes and including.**

Defined, §63-3012.

INCOME TAX —Cont'd**Includes and including —Cont'd**

Joint administration of employment security taxes and income tax withholding.

Tax commission agreement with department of labor,
§63-3035B.

State withholding tax on lottery winnings, §63-3035A.

State withholding tax on percentage basis, §63-3035.

Individuals.

Defined, §63-3008.

Rates, computation of, §63-3024.

Information furnished certain officials, §63-3077.

Agreements for exchange of information and joint administration with department of commerce, §63-3077A.

Fish and game department, agreement to share information, §63-3077C.

Information returns, §63-3037.**Iniunctions.**

Violation of provisions, §63-3064.

Insulation of residences.

Deduction for insulation, §63-3022B.

Insulation defined, §63-3022B.

Interest.

Credits, §63-3073.

Deficiencies in tax and refunds of tax, §63-3045.

Estimated tax.

Unpaid or underpaid tax,
§63-3046A.

Net operating loss carry-back claims.

Interest on refunds resolving from,
§63-3073.

Refunds, §63-3073.

Release by state tax commission,
§63-3055.

Internal revenue code.

Applicability of provisions, §63-3004.

Defined, §63-3004.

Investments.

Credit for capital investment,
§63-3029B.

Biofuel infrastructure, §63-3029M.

Incentive income tax investment credit, §63-3029J.

Qualified investments.

Defined, §63-3029B.

Itemized deductions, §63-3022.**INCOME TAX —Cont'd****Japanese-Americans.**

Reparations for World War II displacement.

Moneys not included as taxable income, §63-3022G.

Jeopardy assessments.

Issuance for taxpayers failing to furnish security, §63-3034.

Jobs creation.

Credit for new employees,
§§63-3029E, 63-3029F.

Joint administration of employment security taxes and income tax withholding.

Agreement between tax commission and department of labor,
§63-3035B.

Leases.

Information returns, §63-3037.

Legislative intent, §63-3002.**Libraries.**

Tax credits for donations to public libraries, §63-3029A.

Liens.

Actions to collect unpaid tax or deficiency, §63-3050.

Action to enforce lien, §63-3056.

Collection and enforcement procedures, §63-3087.

Property subject to lien, §63-3051.

Release or subordination, §63-3055.

Limitation of actions.

Action to enforce lien, §63-3056.

Credits or refunds of taxes for overpayment, §63-3072.

Destruction of old returns, §63-3071.

Issuance of notice of deficiency and collection of tax, §63-3068.

Special statute of limitations,
§63-3069A.

Limited liability companies, §63-3006A.**Long-term care insurance.**

Deduction of premiums, §63-3022Q.

Losses.

Net operating loss.

Defined, §63-3021.

Lotteries.

State withholding tax on lottery winnings, §63-3035A.

Mandamus.

Returns.

Requiring return, §63-3030A.

Marriage penalty adjustment, §63-3022N.

INCOME TAX —Cont'd

Medical savings account deductions, §63-3022K.

Military affairs.

Extensions for filing returns, §63-3033.

Retirement benefits.

Deductions, §63-3022A.

Mortgages.

Information returns, §63-3037.

Multistate tax compact, §63-3701.

Negligence.

Additions to tax in case of negligent disregard of rules, §63-3046.

Net operating loss.

Adjustments to taxable income, §63-3022.

Carry-back claims.

Interest on refunds resulting from, §63-3073.

Defined, §63-3021.

Nonbusiness income.

Defined, §63-3027.

Nonresidents.

Corporate directors, officers and shareholders.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Defined, §63-3014.

Individuals, trusts or estates.

Computing taxable income, §63-3026A. *

Jurisdiction over nonresidents.

Prosecution for deficiency assessed and payable, §63-3065A.

Partnerships.

Election by nonresident partners as to taxable income, §63-3022L.

Additional tax required when filing income tax returns, §63-3082.

Returns.

Persons required to make return, §63-3030.

Tax.

Computing tax of part-year or nonresident individuals, trusts and estates, §63-3026A.

Trust or estate.

Individuals who are beneficiaries of.

Election as to taxable income, §63-3022L.

INCOME TAX —Cont'd**Notice.**

Additional tax due, §63-3045A.

Adjustment of federal or state tax liability, §63-3069.

Deficiency, §63-3045.

Distrain.

Notice of levy and distraint, §63-3061A.

Officers.

Divulging confidential information, §63-3076.

Orders.

Failure to comply with order.

Contempt, §63-3043.

Organ donation.

Tax credit for live organ donation expenses, §63-3029K.

Paid or accrued.

Defined, §63-3016.

Paid or incurred.

Defined, §63-3016.

Parties.

Actions against state of Idaho.

State tax commission made party defendant, §63-3074.

Partnerships.

Defined, §63-3006B.

Nonresident partners.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Returns.

Failure to file partnership return.

Penalty, §63-3046B.

Required, §63-3030.

Part-year residents.

Defined, §63-3013A.

Individuals, trusts and estates.

Computing taxable income, §63-3026A.

Patents.

Corporations.

Computing taxable income, §63-3027.

Payment.

Corporations.

Estimated tax, §63-3036A.

Date tax due and payable, §63-3085.

Deficient payments.

Action to collect, §63-3050.

Additions to tax in case of deficiency, §63-3046.

Deficiencies.

Defined, §63-3044.

INCOME TAX —Cont'd**Payment —Cont'd**

Deficient payments —Cont'd
Distrain.

Collection by distraint not
exclusive, §63-3063.

Personal property, §63-3057.

Production of books, §63-3062.

Interest, §63-3045.

Levy or distraint warrant,
§63-3059.

Liens.

Property subject to lien,
§63-3051.

Notice, §63-3045.

Proceedings on levy or distraint,
§63-3060.

Property exempt from distraint,
§63-3058.

Successive seizures, §63-3061.

Jeopardy assessments.

Taxpayers about to depart from
state or remove property
therefrom, §63-3065.

Liens.

Action to enforce lien, §63-3056.

Property subject to lien for
nonpayment, §63-3051.

Release or subordination of tax
lien, §63-3055.

Other remedies preserved, §63-3064.

Overpayments, §63-3041.

Credits and refunds, §63-3072.

Designation of deposits in trust
account, §§63-3067A to
63-3067C.

Period of limitation for
overpayment, §63-3072.

Penalties, §63-3075.

Security, §63-3034.

Unpaid taxes.

Actions to collect, §63-3050.

When payment made, §63-3034.

Penalties.

Attempt to evade or defeat tax,
§63-3078.

Authority of commission to
compromise penalties, §63-3047.

Divulging confidential information,
§63-3076.

Failure to collect and payover tax,
§63-3078.

Partnerships.

Failure to file partnership return,
§63-3046B.

Release by commission, §63-3055.

Violations, §63-3075.

INCOME TAX —Cont'd**Penalties —Cont'd**

Withholding accounts.

Prohibited acts, §63-3035C.

Person.

Defined, §§63-3005, 63-3083.

Personal property.

Tax deficiencies.

Distrain on personal property,
§63-3057.

Petitions.

Returns.

Failure to file return.

Petition for mandamus,
§63-3030A.

Policemen's retirement fund.

Deduction of retirement benefits,
§63-3022A.

Political parties.

Payment into election campaign
fund.

Designation by individuals,
§63-3088.

Postconsumer waste equipment.

Tax credits, §63-3029D.

Postindustrial waste equipment.

Tax credits, §63-3029D.

Presumptions.

Water's edge election, §63-3027D.

Property taxes.

Taxable income not classified or held
or construed to be property,
§63-3080.

Public assistance and welfare.

Persons receiving public assistance
payments exempt from tax,
§63-3086.

Publications.

Statistics.

Publication of statistics and law by
commission, §63-3039.

Qualified funeral trusts, §63-3015.**Rates, computation of, §63-3024.****Receivers.**

Returns.

Required, §63-3030.

Records.

Examination of records to determine
correctness of return, §63-3042.

Recycling equipment.

Credits, §63-3029D.

Refunds.

Amount, §63-3024A.

Claims.

Manner of making claims,
§63-3067.

Designation of deposits in trust
account, §§63-3067A to
63-3067C.

INCOME TAX —Cont'd**Refunds —Cont'd**

- Interest, §§63-3045, 63-3073.
- Net operating loss carry-back claims.
- Interest on refunds resulting from, §63-3073.
- Overpayments, §63-3041.
- Period of limitations for refunds, §63-3072.
- State refund account, §63-3067.

Rehabilitation facilities.

- Defined, §63-3029C.
- Tax credit allowed, §63-3029C.

Removal of property from state.

- Jeopardy assessments, §63-3065.

Residents.

- Defined, §63-3013.
- Part-year residents.
- Defined, §63-3013A.

Restoration of item of gross revenue under federal tax.

- Deduction in determining state tax, §63-3022F.

Retirement.

- Deduction of certain retirement benefits, §63-3022A.

Returns.

- Additional tax required when filing return, §63-3082.
- Automatic extension of time for filing, §63-3033.
- Corporations.
 - Persons required to make returns, §63-3030.
- Decedents' estates.
 - Returns required, §63-3030.
- Destruction of old returns, §63-3071.
- Determining correctness of return.
 - Examination of books and witnesses, §63-3042.
- Divulging confidential information.
 - Penalties, §63-3076.
- Examination of books and witnesses.
 - Authority of state tax commission, §63-3042.
- Examination of return and determination of tax, §63-3040.
- Excise taxes.
 - Additional tax required when filing returns, §63-3082.
- Extension of time for filing, §63-3033.
- Failure to file returns.
 - Mandamus, §63-3030A.
- False returns.
 - Limitations period for issuing notice of deficiency and collection of tax, §63-3068.

INCOME TAX —Cont'd**Returns —Cont'd**

- Fiduciaries.
 - Returns required, §63-3030.
 - Filing returns.
 - Time, §63-3032.
 - Extension of time, §63-3033.
 - Gross income.
 - Persons required to make return, §63-3030.
 - Information returns, §63-3037.
 - Joint returns, §63-3031.
 - Additional tax required when filing, §63-3082.
 - Election to file joint return for federal purposes requires joint return for state purposes, §63-3031.
 - Marriage penalty adjustment, §63-3022N.
 - Overpayments, §63-3041.
 - Mandate to compel return, §63-3030A.
 - Military personnel.
 - Extensions of time, §63-3033.
 - Nonresidents.
 - Persons required to make returns, §63-3030.
 - Notice of additional tax due, §63-3045A.
 - Partnerships.
 - Failure to file partnership return.
 - Penalty, §63-3046B.
 - Returns required, §63-3030.
 - Penalties.
 - False or fraudulent returns, §63-3075.
 - Persons required to make returns, §63-3030.
 - Receivers, §63-3031.
 - Returns required, §63-3030.
 - Surviving spouses, §63-3031.
 - Time.
 - Filing of returns, §63-3032.
 - Extension, §63-3033.
 - Trusts.
 - Returns required, §63-3030.
- Rules and regulations.**
- State tax commission, §63-3039.
- Sales.**
- Deficient payments.
 - Distrain on personal property, §63-3057.
 - Defined, §63-3027.
- Sales tax.**
- Additions and penalties applied in same manner, §63-3634.

INCOME TAX —Cont'd**Sales tax —Cont'd**

Collection and enforcement
procedure, §63-3635.

Schedules.

Publication, §63-3024.

Searches and seizures.

Property seized for nonpayment.

Successive seizures, §63-3061.

Seizures in collection of deficiencies.

Certain seizures or sales
considered legal, §63-3074.

Security for payment, §63-3034.**Sentencing.**

Divulging confidential information,
§63-3076.

Penalties for violations, §63-3075.

Sheriffs.

Distrain.

Production of books, §63-3062.

Levy or distrain warrant, §63-3059.

Proceedings on levy or distrain,
§63-3060.

Small employer incentive act.

Credits.

Capital investments, §63-4403.

Limitations, rules and regulations,
§63-4406.

New jobs, §63-4405.

Real property improvements,
§63-4404.

Solar energy devices.

Deduction for alternative energy
device at residence, §63-3022C.

Standard deduction, §63-3022.**State lottery prizes.**

Withholding tax, §63-3035A.

Statements.

Extension of time for filing, §63-3033.

State of Idaho.

Actions against state.

State tax commission made party
defendant, §63-3074.

States.

Credit for taxes paid another state or
territory, §63-3029.

State tax commission.

Actions against state.

State tax commission made party
defendant, §63-3074.

Adjusted or compromised cases.

Closing agreements, §63-3048.

Administration and enforcement of
act, §63-3038.

Agreements for collection of tax,
§63-3077D.

INCOME TAX —Cont'd**State tax commission —Cont'd**

Administration and enforcement of
act —Cont'd

Agreements for exchange of
information and joint
administration with
department of commerce,
§63-3077A.

Appeals.

Redeterminations by state tax
commission, §63-3049.

Computation and publication of tax
liability for resident taxpayers,
§63-3024.

Deposits of revenue received,
§63-3067.

Deputies.

Authority to designate, §63-3038.

Distrain.

Proceedings on levy or distrain,
§63-3060.

Divulging confidential information,
§63-3076.

Employees, §63-3038.

Enforcement of provisions of act,
§63-3080.

Information furnished certain
officials, §63-3077.

Agreements for exchange of
information and joint
administration with
department of commerce,
§63-3077A.

Legal advisor, §63-3066.

Liens.

Release or subordination of income
tax lien, §63-3055.

Publication of statistics and law,
§63-3039.

Returns.

Examination and determination of
correct amount of tax,
§63-3040.

Mandate to compel return,
§63-3030A.

Rules and regulations, §63-3039.

State treasurer.

Deposits of revenue received,
§63-3067.

Statistics.

Publication of statistics by state tax
commission, §63-3039.

Subpoenas.

Failure to comply with subpoena.

Contempt, §63-3043.

INCOME TAX —Cont'd**Supreme court.****Appeals.**

Judgments of district court appeal to supreme court, §63-3049.

Surviving spouses.

Imposition of tax, §63-3024.

Returns, §63-3031.

Taxable income.

Adjustments to, §63-3022.

Property acquired after September 10, 2001, §63-3022O.

Corporate income.

Computing taxable income of corporation, §§63-3027, 63-3027A.

Defined, §63-3010.

Estates.

Part-year or nonresident estates, §63-3026A.

Individuals' tax and tax on estates and trusts measured by taxable income, §63-3024.

Nonresident individuals, trusts and estates.

Computing, §63-3026A.

Not classified or held or construed to be property, §63-3080.

Part-year or nonresident individuals, trusts and estates, §63-3026A.

Computing, §63-3026A.

Trusts.

Part-year or nonresident trusts, §63-3026A.

Taxable year.

Adjustment by federal internal revenue action.

Limitations period for issuance of notice of deficiency and collection of tax, §63-3068.

Tax additional to other income taxes, §63-3084.**Tax commission.**

Joint administration of employment security taxes and income tax withholding.

Agreement with department of labor, §63-3035B.

Tax exempt income.

Deduction of expenses and interest relating to, §63-3022M.

Taxpayers.

Defined, §63-3009.

Removal of property from state or taxpayers about to depart from state.

Jeopardy assessments, §63-3065.

INCOME TAX —Cont'd**Taxpayers —Cont'd**

Unreasonable or unnecessary examinations or investigations, §63-3042.

Technological equipment.

Deductions, §63-3022J.

Telecommunications.

Broadband equipment.

Credit for investment in, §63-3029I.

Time.

Date tax due and payable, §63-3085.

Returns.

Filing returns, §63-3032.

Extension of time for filing, §63-3033.

Title of act, §63-3001.**Transacting business.**

Defined, §63-3023.

Trusts and trustees.

Nonresident individuals who are beneficiaries of trust or estate.

Election as to taxable income, §63-3022L.

Rate of tax, §63-3024.

Returns.

Trusts required to make returns of income, §63-3030.

Tax imposed on trusts, §63-3024.

Computing tax of part-year or nonresident trusts, §63-3026A.

Trust accounts.

Designation of deposits in trust account, §§63-3067A to 63-3067C.

United States.

Adjustment of federal tax liability.

Notice, §63-3069.

Department of energy.

Franchise tax, §63-3025A.

Information furnished to certain officials, §63-3077.

Retirement annuities.

Deduction, §63-3022A.

Violations.

Penalties, §63-3075.

Warrants.

Levy or distraint warrants, §63-3059.

Water's edge election.

Binding effect, §63-3027C.

Burden of proof, §63-3027D.

Definitions, §63-3027B.

Dividends.

Treatment, §63-3027C.

Effect.

Binding effect, §63-3027C.

Generally, §63-3027B.

INCOME TAX —Cont'd**Water's edge election —Cont'd**

Operative dates, §63-3027E.

Presumptions, §63-3027D.

Widows.

Defined, §63-3022A.

Withholding tax.

Penalties for violations, §63-3035C.

Revocation and suspension of
withholding account, §63-3035C.State withholding tax for farmers,
§63-3036.State withholding tax on lottery
winnings, §63-3035A.State withholding tax on percentage
basis, §63-3035.**Witnesses.**

Determining correctness of returns.

Examination of witnesses,
§63-3042.**Years.**

Taxable year.

Defined, §63-3010.

INCOME TAX CHECKOFFS.**Donation or refund designation,**

§§63-3067A to 63-3067C.

Election campaign fund, §63-3088.

INCOME WITHHOLDING.**Income tax.**Joint administration of employment
security taxes and income
withholding, §63-3035B.

Penalties for violations, §63-3035C.

Revocation and suspension of
withholding account, §63-3035C.State withholding tax for farmers,
§63-3036.State withholding tax on lottery
winnings, §63-3035A.State withholding tax on percentage
basis, §63-3035.**INCOMPETENT PERSONS.****Hospitalization of mentally ill,**

§§66-317 to 66-355.

See MENTALLY ILL.

**Interstate compact on mental
health, §§66-1201 to 66-1205.**

See MENTALLY ILL.

**INDEPENDENT LIVING
CENTERS.****Income tax credit for
rehabilitation facilities,
§63-3029C.****INDIANS.****Fuels tax.**

Tribal agreements.

Effect, §63-2444.

INDIANS —Cont'd**Sales tax.**Sale of tangible personal property
occurring within boundaries of
Indian reservations.

Exempted sales, §63-3622Z.

INDUSTRIAL COMMISSION.**Taxation.**Exchange of information with state
tax commission, §63-3077B.**INJUNCTIONS.****Cigarette and tobacco products
taxes.**Private actions for violations,
§63-2527.

Wholesalers.

Engaging in business without
holding valid permit or license,
§63-2519.**Fuels tax.**

Doing business without license.

Civil action to enjoin, §63-2432.

Income tax.

Violation of provisions, §63-3064.

INSANE ASYLUMS.**Hospitalization of mentally ill,**

§§66-317 to 66-355.

See MENTALLY ILL.

INSPECTIONS.**Veterans.**

Veterans' home, §66-904.

INTEREST.**Cigarette and tobacco products
taxes.**Credits or refunds, §§63-2521,
63-2565.Distribution of moneys collected,
§§63-2520, 63-2564.**Cooperative electrical associations.**

Gross earnings tax.

Delinquent payments, §63-3504.

Electric power.

License tax on electricity.

Delinquent payments, §63-2702.

Excess payment, §63-2702A.

Fuels tax.

Distribution of revenue, §63-2412.

Refunds or credits, §63-2410.

Payment of special fuels tax
directly to vendor, §63-2423.**Illegal drug stamp tax.**

Distribution of revenues, §63-4209.

Income tax.

Credits, §63-3073.

Deficiencies in tax and refunds of
tax, §63-3045.

INTEREST —Cont'd**Income tax —Cont'd**

Deficient payment, §63-3045.

Estimated tax.

Unpaid or underpaid tax,
§63-3046A.

Net operating loss carry-back claims.

Interest on refunds resolving from,
§63-3073.

Refunds, §63-3073.

Release by state tax commission,
§63-3055.

Property taxes.

Adjustment of late charges or
interest, §63-1304.

Deferral of tax, §63-716.

Payment of interest, §63-718.

Delinquent taxes and penalties.

Rate, §63-1001.

When interest assessed, §63-903.

Sales tax.

Credits and refunds, §63-3626.

Deficient payments, §63-3632.

INTERNAL REVENUE CODE.**Applicability of provisions,**

§63-3004.

Defined, §63-3004.

INTERNATIONAL FUEL TAX

AGREEMENT, §63-2442A.

INTERNATIONAL FUEL TAX

AGREEMENT LICENSE,

§§63-2438 to 63-2443.

INTERSTATE COMPACTS.

Mental health, §§66-1201 to 66-1205.

See **MENTALLY ILL.**

Multistate tax compact, §§63-3701 to
63-3709.

Taxation.

Multistate tax compact, §§63-3701 to
63-3709.

INVENTORY.**Property taxes.**

Exemption of business inventory,
§63-602W.

INVESTMENTS.**Income tax.**

Credit for capital investment,
§63-3029B.

Biofuel infrastructure, §63-3029M.

Incentive income tax investment
credit, §63-3029J.

Qualified investments.

Defined, §63-3029B.

INVOLUNTARY COMMITMENT.**Mentally ill.**

Hospitalization of mentally ill
generally, §§66-317 to 66-355.

**IRRIGATION AND WATER
RIGHTS.****Electric power.**

License tax on electricity.

Exemption of electricity for
pumping water for irrigation
purposes, §63-2705.

Property taxes.

Exempt property.

Electrical or natural gas energy.

Property used for generating and
delivering for irrigation or
drainage purposes,
§63-602O.

Electric or gas utilities pumping
water for irrigation or
drainage, §63-603.

Irrigation water and structures,
§63-602N.

Operating property of irrigation
district, §63-602N.

Sales tax.

Exemptions.

Equipment and supplies exempt,
§63-3622W.

IRRIGATION DISTRICTS.**Property taxes.**

Exemption of operating property,
§63-602N.

J**JAILS.****Mentally ill.**

Security medical facilities, §§66-1301
to 66-1318.

See **MENTALLY ILL.**

JAPANESE-AMERICANS.**Income tax.**

Reparations for World War II
displacement.

Moneys not included as taxable
income, §63-3022G.

JUDGMENTS.**Licenses.**

License taxes.

Suits for recovery of license tax,
§63-2307.

JURISDICTION.**Cigarette and tobacco products
taxes.**

Nonresidents, §63-2517.

JURISDICTION —Cont'd**Developmental disabilities.**

District courts.

Treatment and care of
developmentally disabled,
§66-403.

Mentally ill.

Hospitalization of mentally ill.

Commitment proceedings, §66-328.

State hospitals.

Under jurisdiction of board of
health and welfare, §66-116.

Nonresidents.

Income taxes.

Prosecution for deficiency assessed
and payable, §63-3065A.

Taxation.

Taxpayer bill of rights.

Revenue officer violations,
§63-4011.

K**KILOWATT-HOUR TAX.**

License tax on electricity, §§63-2701
to 63-2711.

See ELECTRIC POWER.

L**LABOR AND EMPLOYMENT
RELATIONS.****Veterans' preference.**

Applicability of act limited, §65-507.

Definitions, §65-502.

Failing or refusing to give preference
in hiring, §65-506.

Officials to observe preference for
veterans, §65-505.

Preference to be given veterans,
spouses, widows and widowers
by public employers, §65-503.

Relation to other laws, §65-510.

LAND REMEDIATION.**Property taxes.**

Exemption for remediated land,
§63-602BB.

LEASES.**Income tax.**

Information returns, §63-3037.

LIABILITY.**Disabled persons.**

Treatment and care of
developmentally disabled.

Developmentally disabled persons
with assets sufficient to pay
expenses, §66-414.

LIABILITY —Cont'd**Disabled persons —Cont'd**

Treatment and care of
developmentally disabled
—Cont'd

Relatives, §66-414.

Mentally ill.

Hospitalization of mentally ill.

Care and treatment costs, §66-355.

Exemptions from liability, §66-341.

Liability of relatives, §66-354.

Mentally ill person with assets
sufficient to pay expenses,
§66-354.

Public works contractors.

Taxation.

Personal liability of officers of
contracting units failing to
comply with or violating
provisions, §63-1505.

Taxation.

Revenue officers.

Bill or rights violations, §63-4011.

Veterans.

Preference in hiring.

Civil liability for failure or refusal
to give preference, §65-506.

LIBRARIES.**Taxation.**

Income tax.

Tax credits for donations to public
libraries, §63-3029A.

Property taxes.

Exemption of public libraries,
§63-602F.

LICENSES AND PERMITS.**Actions.**

License taxes.

Suits for recovery of tax, §63-2307.

Plea of recovery in civil actions,
§63-2308.

Amusement devices, §63-3623B.

Auctions and auctioneers.

License tax, §63-2304.

Costs.

License taxes.

Suits for recovery of tax, §63-2307.

Criminal offenses.

License taxes.

Failure to comply with provisions,
§63-2309.

Electric power.

License tax on electricity, §§63-2701
to 63-2711.

See ELECTRIC POWER.

Ferries.

Toll ferries, §63-2305.

LICENSES AND PERMITS —Cont'd

Judgments.

License taxes.

Suits for recovery of license tax,
§63-2307.

License taxes.

Actions.

Suits for recovery of tax, §63-2307.

Application of license money,
§63-2306.

Auctioneer's license, §63-2304.

Bridge and ferry license, §63-2305.

Carrying on business without license.

Suit for recovery of tax, §63-2307.

Commencement of business.

License to be procured before,
§63-2302.

Costs.

Suits for recovery of license tax,
§63-2307.

Electricity, §§63-2701 to 63-2711.

See **ELECTRIC POWER**.

Failure or refusal to take out license.

Suits for recovery of tax, §63-2307.

Judgments.

Suits for recovery of license tax,
§63-2307.

Monthly settlement for license,
§63-2306.

Pawnbroker's license, §63-2303.

Pleadings.

Suits for recovery of license tax.

Plea of recovery in civil action,
§63-2308.

Preparation and printing of licenses,
§63-2301.

Procurement of license before
commencing business, §63-2302.

Production of licenses.

When defendant deemed not to
have procured proper license,
§63-2308.

Suits for recovery of license tax,
§63-2307.

Plea of recovery in action,
§63-2308.

Misdemeanors.

License taxes.

Failure to comply with provisions,
§63-2309.

Pawnbrokers.

License tax, §63-2303.

Pleadings.

License taxes.

Suits for recovery of license tax.

Plea of recovery in civil actions,
§63-2308.

LICENSES AND PERMITS —Cont'd

Prosecuting attorneys.

License taxes.

Suits for recovery of license tax.

Fees for prosecuting attorney,
§63-2307.

Sales tax.

Sellers, §63-3620.

LIENS.

Cooperative electrical associations.

Gross earnings tax.

Tax constitutes lien on property
until paid, §63-3505.

Income tax.

Actions to collect unpaid tax or
deficiency, §63-3050.

Action to enforce lien, §63-3056.

Collection and enforcement
procedures, §63-3087.

Property subject to lien, §63-3051.

Release or subordination, §63-3055.

Mines and mining.

Taxation of profits of mines.

Collection of tax lien, §63-2811.

Property taxes, §63-206.

Deferral of tax, §63-716.

Delinquent taxes, §63-1003.

Professional services for collection.

Costs, §63-1314.

Recovery of improperly claimed
exemptions.

Homestead exemption, unpaid
recovered taxes, §63-602G.

Unpaid personal property taxes.

Lien on real property, §63-504.

Real property.

Taxes levied on real property
constitute lien, §63-206.

LIMITATION OF ACTIONS.

Fuels tax.

Claims for refunds, §63-2410.

Payment of special fuels tax
directly to vendor, §63-2423.

Illegal drug stamp tax.

Criminal prosecutions, §63-4207.

Income tax.

Action to enforce lien, §63-3056.

Credits or refunds of taxes for
overpayment, §63-3072.

Destruction of old returns, §63-3071.

Issuance of notice of deficiency and
collection of tax, §63-3068.

Special statute of limitations,
§63-3069A.

LIMITATION OF ACTIONS —Cont'd

Property taxes.

- Appeal of assessments, §63-501A.
- Payment under protest.
 - Action for recovery, §63-1308.
- Recovery of improperly claimed exemptions.
 - Homestead exemption, §63-602G.
- Tax relief.
 - Erroneous claims.
 - Recovery, §63-708.

Sales tax.

- Assessment and collection, §63-3633.

LIMITED LIABILITY COMPANIES.

Income taxation, §63-3006A.

Sales tax.

- Responsibility for taxes, §63-3627.

LIVESTOCK MARKETS.

Sales tax.

- Livestock sold at livestock markets, §63-3622MM.

LOGS AND LOGGING.

Sales tax.

- Exempted equipment and supplies, §63-3622JJ.

LONG-TERM CARE INSURANCE.

Income tax.

- Deduction of premiums, §63-3022Q.

LOTTERIES.

Income tax.

- State withholding tax on lottery winnings, §63-3035A.

LOW INCOME HOUSING.

Property taxes.

- Low income property owned by nonprofit organization, exemption, §63-602GG.

M

MAGAZINES.

Sales tax.

- Advertising space sold by publisher of magazine.
 - Tangible personal property not to include, §63-3616.

MAIL.

Mentally ill.

- Hospitalization of mentally ill.
 - Right to communicate by mail, §66-346.

Property taxes.

- Filing material by mail, §63-217.

MANDAMUS.

Income tax.

- Returns.
 - Requiring return, §63-3030A.

MANUFACTURED HOMES.

Appraisals and appraisers.

- Property taxes.
 - Method of appraisal, §63-303.

Occupancy tax, §63-317.

Property taxes.

- Assessments, §63-303.
 - Real property.
 - Reversal of declaration which treats manufactured home as real property, §63-305.
 - When manufactured homes constitute, §63-304.

Defined, §63-201.

Delinquency, §63-304.

Exemptions.

- Use under dealer's plate or as sheep or cow camp, §63-602DD.

Occupancy tax, §63-317.

Real property.

- Assessments, §§63-304, 63-305.

Real property.

Property taxes.

- Assessments, §§63-304, 63-305.

Sales tax.

Exemptions.

- Used manufactured homes, §63-3622R.

New manufactured homes.

- Defined, §63-3606.

MARIJUANA.

Illegal drug stamp tax.

- General provisions, §§63-4201 to 63-4211.

See **ILLEGAL DRUG STAMP TAX.**

MARRIAGE.

Veterans.

- Furnishing certified copies of marriage without fee, §65-301.

MEDIATION.

State tax commission.

- Alternative dispute resolution, §63-118.

MEDICAL EQUIPMENT.

Sales tax exemption, §63-3622N.

MEDICAL FACILITIES.

Developmental disabilities services and facilities, §§39-4601 to 39-4608.

- See **DEVELOPMENTAL DISABILITIES.**

MEDICAL FACILITIES —Cont'd**Mentally ill.**

Security medical program, §§66-1301 to 66-1318.

See **MENTALLY ILL**.

MEDICAL SAVINGS ACCOUNTS.

Income tax deductions, §63-3022K.

MEMORIALS.

Servicemen's memorials, §§65-101 to 65-106.

Application to legislature for aid, §65-106.

Appropriations.

Permanent appropriation discontinued, §65-105.

State and local appropriations, §65-102.

Character of memorial, §65-102.

Construction.

Permanent appropriation discontinued, §65-105.

Special tax for construction, §65-104.

County memorial commission, §65-101.

Design, §65-102.

State aid, §65-102.

Applications to legislature, §65-106.

Conditions precedent, §65-102.

Taxation.

Special tax for construction, §65-104.

Special tax for upkeep, §65-103.

Upkeep.

Appropriation discontinued, §65-105.

Special tax, §65-103.

Taxation.

Servicemen's memorials.

Special tax for construction, §65-104.

Special tax for upkeep, §65-103.

MENTAL EXAMINATIONS.

Involuntary commitment, §66-333.

MENTALLY ILL.**Acquittal.**

Persons acquitted of crime on grounds of mental illness or defect.

Commitment to security medical program, §66-1304.

Individuals previously acquitted pursuant to section 18-213.

Commitment of acquitted defendants, §66-337.

MENTALLY ILL —Cont'd**Admission of patients.**

Hospitalization of mentally ill, §§66-317 to 66-355.

Appeals.

Hospitalization of mentally ill.

Change in disposition, §66-342.

Assets.

Hospitalization of mentally ill.

Liability of relatives, §66-354.

Mentally ill person with assets sufficient to pay expenses, §66-354.

Asylums.

Hospitalization of mentally ill, §§66-317 to 66-355.

Attorneys at law.

Hospitalization of mentally ill.

Involuntary commitment.

Representation by counsel, §66-329.

Rights of patients, §66-346.

Board of health and welfare.

Charitable institutions commission.

Transfer of powers and duties to board, §66-114.

Transfer of property to board, §66-117.

Conflicts of interest.

State hospitals.

Pecuniary interest in contracts forbidden, §66-119.

Contracts.

State hospitals.

Pecuniary interest in contracts forbidden, §66-119.

Reports.

State hospitals.

Annual report, §66-118.

State hospitals.

Annual report, §66-118.

Conflicts of interest.

Pecuniary interest in contracts forbidden, §66-119.

Jurisdiction.

Institutions under jurisdiction of board, §66-116.

Management and control of state hospitals by board, §§66-116, 66-118.

Pecuniary interest in contracts forbidden, §66-119.

Powers and duties of board, §66-118.

Reports.

Annual reports, §66-118.

MENTALLY ILL —Cont'd**Care of patients.**

- Hospitalization of mentally ill.
 - Federal facilities.
 - Involuntary commitment, §66-331.
- Security medical program.
 - Right to humane care and treatment, §66-1311.
 - Standards for treatment, §66-1312.

Charges.

- Security medical program.
 - Evaluation, treatment and care of residents.
 - Recovery of expenses, §66-1309.

Charitable institutions**commission.**

- Powers and duties.
 - Transfer to board of health and welfare, §66-114.
- Property.
 - Transfer to board of health and welfare, §66-117.

Charities.

- State hospitals, §§66-114 to 66-119.

Civil rights.

- Hospitalization of mentally ill.
 - Exercise of civil rights, §66-346.
- Security medical program.
 - Rights of patients, §66-1310.
 - Humane care and treatment, §66-1311.

Commitment.

- Hospitalization of mentally ill, §§66-317 to 66-355.
- Security medical program, §§66-1301 to 66-1318.

Compacts.

- Interstate compact on mental health, §§66-1201 to 66-1205.

Confidentiality of information.

- Hospitalization of mentally ill.
 - Disclosure of information, §66-348.

Conflicts of interest.

- State hospitals.
 - Board of health and welfare.
 - Pecuniary interest in contracts forbidden, §66-119.

Construction and interpretation.

- Hospitalization of mentally ill.
 - Terms "residence," "residing" or "resides," §66-325.

Contracts.

- Security medical program.
 - Interstate contracts, §66-1314.
- State hospitals.
 - Board of health and welfare.
 - Pecuniary interest in contracts forbidden, §66-119.

MENTALLY ILL —Cont'd**Convicts.**

- Commitment of mentally ill convicts, §66-335.

Copies.

- Interstate compact on mental health.
 - Transmission of copies of act, §66-1205.

Corrections.

- Commitment of mentally ill convicts, §66-335.
- Security medical program, §§66-1301 to 66-1318.

Costs of treatment.

- Hospitalization of mentally ill.
 - Liability for care and treatment costs, §66-355.

Criminal offenses.

- Hospitalization of mentally ill.
 - Violation of patients' rights, §66-349.

Criminal procedure.

- Commitment of mentally ill convicts, §66-335.
- Security medical program, §§66-1301 to 66-1318.

Dangerous and mentally ill persons.

- Security medical program generally, §§66-1301 to 66-1318.

Declarations for mental health treatment, §§66-601 to 66-613.

- Access to information by agent, §66-606.
- Actions contrary to declaration, §66-609.
- Agent.
 - Declaration to name
 - attorney-in-fact and alternative agent, §66-602.
 - Designation, §66-603.
 - Immunity for good faith actions, §66-606.
 - Persons who may not serve as, §66-603.
 - Powers, §66-606.
 - Withdrawal, §66-607.
- Altering, forging, concealing or destroying declaration, §66-612.
- Alternative agent.
 - Designation, §66-603.
- Authority provided in other provisions not limited by declaration, §66-610.
- Commitment to treatment facility.
 - Actions contrary to declaration, §66-609.

MENTALLY ILL —Cont'd**Declarations for mental health treatment —Cont'd**

- Competent adults may make, §66-602.
- Condition for receiving mental or physical health services.
 - Person may not be required to execute or refrain from executing declaration, §66-608.
- Condition of discharge from facility.
 - Person may not be required to execute or refrain from executing declaration, §66-608.
- Consent to or refusal of treatment.
 - Preferences or instructions may include, §66-602.
- Continuance in effect until revoked, §66-602.
- Definitions, §66-601.
- Emergency endangering life or health.
 - Actions contrary to declaration, §66-609.
- Establishment of physician-patient relationship, §66-605.
- Form, §66-613.
- Good faith immunity of agent, §66-606.
- Immunity of physician or provider administering treatment, §66-611.
- Informed consent of principal to be obtained, §66-605.
- Insurance requirement.
 - Person may not be required to execute or refrain from executing declaration as criteria, §66-608.
- Limited immunity of physician or provider administering treatment, §66-611.
- Medical records.
 - Declaration to become part of, §66-605.
- Notice of withdrawal by agent, §66-607.
- Operation upon delivery to principal's physician or mental health treatment provider, §66-605.
- Persons who may not serve as agent, §66-603.
- Persons who may not serve as witnesses, §66-604.
- Powers of agent, §66-606.
- Relation to other provisions, §66-610.

MENTALLY ILL —Cont'd**Declarations for mental health treatment —Cont'd**

- Rescinding agent's withdrawal, §66-607.
- Revocation, §66-602.
 - Knowingly reinstating, §66-612.
- Signature required, §66-604.
- Withdrawal by agent, §66-607.
- Withdrawal by physician or provider from providing treatment.
 - Unwillingness to comply with declaration, §66-605.
- Witnesses attesting to declaration, §66-604.
- Persons who may not serve as, §66-604.

Definitions.

- Dangerous and mentally ill persons, §66-1305.
- Declarations for mental health treatment, §66-601.
- Hospitalization of mentally ill, §66-317.
- Interstate compact on mental health, §66-1201.

Detention.

- Hospitalization of mentally ill.
 - Detention pending judicial determination, §66-350.
 - Detention without hearing, §66-326.
 - Writ of habeas corpus, §66-347.
- Temporary detention, §66-330.

Discharge of patients.

- Hospitalization of mentally ill.
 - Detention pending judicial determination, §66-350.
 - Involuntary commitment, §66-337.
 - Repayment of money on discharge of patient, §66-351.
- Security medical program.
 - Final decision, §66-1306.

Examinations.

- Hospitalization of mentally ill.
 - Involuntary commitment.
 - Physical and mental examinations for newly admitted patients, §66-333.

Facilities.

- Hospitalization of mentally ill.
 - Care and treatment in federal facilities, §66-331.
 - Definitions, §66-317.
 - Involuntary commitment.
 - Transfer of patients between certain in-patient treatment facilities, §66-334.

MENTALLY ILL —Cont'd**Facilities** —Cont'd

Security medical program, §§66-1301 to 66-1318.

Fines.

Hospitalization of mentally ill.
Violation of patients' rights,
§66-349.

Funds.

Mental hospital earnings reserve fund, §66-1101A.
Mental hospital income fund,
§66-1102.
Mental hospital permanent endowment fund, §66-1101.
State asylum and sanitarium fund for patients, §§66-501 to 66-503.

Gravely disabled.

Defined, §66-317.

Guardian ad litem.

Hospitalization of mentally ill.
Involuntary commitment.
Appointment of guardian ad litem, §66-329.

Guardians.

Hospitalization of mentally ill.
Appointment of guardian,
§§66-322, 66-355.
Judicial procedure, §66-322.

Habeas corpus.

Hospitalization of mentally ill.
Writ of habeas corpus, §66-347.

Hearings.

Hospitalization of mentally ill.
Detention without hearing,
§66-326.
Involuntary commitment, §66-329.
Detention pending commitment proceedings.
Time within which hearing must be held, §66-326.
Outpatient commitment, §66-339B.

Hospitalization of mentally ill,

§§66-317 to 66-355.

Acquitted defendants.

Commitment of acquitted defendants.
Individuals previously acquitted pursuant to section 18-213,
§66-337.

Appeals.

Change in disposition, §66-342.

Applications.

Involuntary commitment, §66-329.

Assets.

Liability of relatives, §66-354.
Mentally ill persons with assets sufficient to cover expenses,
§66-354.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Attorneys at law.

Involuntary commitment.
Representation by counsel,
§66-329.

Rights of patients, §66-346.

Authority to admit voluntary patients, §66-318.

Authority to receive involuntary patients, §66-324.

Care of patients.

Federal facilities.
Involuntary commitment,
§66-331.

Proceedings for care, §66-328.

Responsibility, §66-327.

Change in disposition, §66-342.

Appeals, §66-342.

Civil rights.

Exercise of civil rights, §66-346.

Communication.

Right to communication and visitation, §66-346.

Confidentiality of information.

Disclosure of information, §66-348.

Construction and interpretation.

Residence, §66-325.

Convicts.

Commitment of mentally ill convicts, §66-335.

Corrections.

Commitment of mentally ill convicts, §66-335.

Costs of treatment.

Liability for care and treatment costs, §66-355.

Criminal offenses.

Violation of patients' rights,
§66-349.

Criminal procedure.

Commitment of mentally ill convicts, §66-335.

Definitions, §66-317.**Detention.**

Detention without hearing,
§66-326.

Pending judicial determination,
§66-350.

Temporary detention, §66-330.

Writ of habeas corpus, §66-347.

Discharge of patients.

Detention pending judicial determination, §66-350.

Involuntary commitment, §66-337.

Repayment of money on discharge of patient, §66-351.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Discharge of patients —Cont'd

Security medical program.

Final decision, §66-1306.

Disclosure of information, §66-348.

Examinations.

Involuntary commitment.

Physical and mental

examinations for newly
admitted patients, §66-333.

Exercise of civil rights, §66-346.

Facilities.

Care and treatment in federal
facilities, §66-331.

Definitions, §66-317.

Involuntary commitment.

Transfer of patients between
certain in-patient treatment
facilities, §66-334.Transfer of patients between
certain in-patient treatment
facilities, §66-334.

Federal facilities.

Care and treatment in federal
facility, §66-331.

Fines.

Violation of patients' rights,
§66-349.

Gravely disabled.

Defined, §66-317.

Guardian ad litem.

Involuntary commitment.

Appointment of guardian ad
litem, §66-329.

Guardians.

Appointment of guardian, §66-322.

Judicial procedure, §66-322.

Habeas corpus.

Writ of habeas corpus, §66-347.

Hearings.

Involuntary commitment, §66-329.

Detention pending commitment
proceedings.Time within which hearing
must be held, §66-326.

Humane care and treatment.

Right to humane care and
treatment, §66-344.

Imminent danger to person or others.

Detention without hearing,
§66-326.

Incompetency of mentally ill person.

Requires separate proceeding,
§66-355.**MENTALLY ILL —Cont'd****Hospitalization of mentally ill**

—Cont'd

Involuntary commitment.

Acquitted defendants.

Individuals previously acquitted
pursuant to section 18-213,
§66-337.

Applications, §66-329.

Attorneys at law.

Representation by counsel,
§66-329.Authority to receive involuntary
patients, §66-324.

Care of patients.

Federal facilities, §66-331.

Commencement of proceedings,
§66-329.Conditional release of patients,
§66-338.Rehospitalization of patients
conditionally released from
in-patient treatment
facilities, §66-339.

Convicts, §66-335.

Corrections.

Commitment of mentally ill
convicts, §66-335.

Detention.

Pending judicial determination,
§66-350.

Without hearing, §66-326.

Discharge of patients, §66-337.

Examinations.

Physical and mental

examinations for newly
admitted patients, §66-333.

Federal facilities.

Care and treatment, §66-331.

Guardian ad litem.

Appointment, §66-329.

Hearings, §66-329.

Detention pending commitment
proceeding.Time within which hearing
must be held, §66-326.

Venue, §66-329.

Imminent danger to person or
others.Detention without hearing,
§66-326.

In-patient treatment facilities.

Transfer of patients between
certain facilities, §66-334.

Judicial procedure, §66-329.

Jurisdiction of proceedings,
§66-328.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Involuntary commitment —Cont'd

Money found on mentally ill persons.

Disposition, §66-352.

Notice.

Change in disposition, §66-342.

Medical, security or behavioral needs, §66-330.

Place of treatment, §66-330.

Transfer of patients between certain in-patient treatment facilities, §66-334.

Orders, §66-329.

Commitment upon court order, §66-329.

Petition for reexamination of orders, §66-343.

Persons not to be involuntarily committed unless mentally ill, §66-329.

Petitions.

Detention pending commitment proceedings, §66-326.

Reexamination of order of commitment, §66-343.

Physical examinations.

Newly admitted patients, §66-333.

Prisons and prisoners.

Commitment of mentally ill convicts, §66-335.

Rehospitalization.

Patients conditionally released from in-patient treatment facilities, §66-339.

Representation by counsel, §66-329.

Responsibility for costs, §66-327.

Review, §66-337.

Security medical program.

Final decisions, §66-1306.

Patients from other institutions, §66-1316.

Source of residents, §66-1304.

Temporary detention, §66-330.

Detention without hearing, §66-326.

Termination of commitment, §66-337.

Transfer of patients between certain in-patient treatment facilities, §66-334.

Transportation, §66-330.

Treatment.

Federal facilities, §66-331.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Involuntary commitment —Cont'd

Treatment —Cont'd

Transfer of patients between certain in-patient treatment facilities, §66-334.

United States.

Care and treatment in federal facility, §66-331.

Upon court order, §66-329.

Venue of hearings, §66-329.

Jurisdiction.

Involuntary commitment, §66-328.

Liability.

Care and treatment costs, §66-355.

Exemptions from liability, §66-341.

Mentally ill person with assets sufficient to pay expenses, §66-354.

Relatives.

Liability for expenses, §66-354.

Mail.

Right to communicate by mail, §66-346.

Minors.

Emancipated minor.

Defined, §66-317.

Misdemeanors.

Violation of patients' rights, §66-349.

Money.

Found on mentally ill persons.

Disposition, §66-352.

Liability of relatives, §66-354.

Mentally ill person with assets sufficient to pay expenses, §66-354.

Repayment of money on discharge of patient, §66-351.

Notice.

Change in disposition, §66-342.

Involuntary commitment.

Medical, security or behavioral needs, §66-330.

Place of treatment, §66-330.

Transfer of patients between certain in-patient treatment facilities, §66-334.

Rights of patients, §66-346.

Orders.

Involuntary commitment, §66-329.

Petition for reexamination of order, §66-343.

Outpatient commitment, §66-339A.

Defined, §66-317.

Hearing, §66-339B.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Outpatient commitment —Cont'd

Noncompliance with court order,
§66-339C.

Penalties.

Violation of patients' rights,
§66-349.

Personal property.

Right to use, own or wear certain
personal property, §66-346.

Petitions.

Detention pending commitment
proceedings, §66-326.

Involuntary commitment.

Petition for reexamination of
order, §66-343.

Reexamination of order of
commitment, §66-343.

Writ of habeas corpus, §66-347.

Physical examinations.

Involuntary commitment.

Newly admitted patients,
§66-333.

Prisons and prisoners.

Commitment of mentally ill
convicts, §66-335.

Proceedings.

Incompetency.

Determination to be separate
proceeding, §66-355.

Records.

Rights of patients, §66-346.

Rehospitalization.*

Patients conditionally released
from in-patient treatment
facilities, §66-339.

Relatives.

Liability of relatives, §66-354.

Release of involuntarily committed patients.

Conditional release, §66-338.

Rehospitalization of patients
conditionally release from
in-patient treatment
facilities, §66-339.

Release of voluntary in-patients,
§66-319.

Right to release on application,
§66-320.

Exceptions, §66-320.

Residence.

Construction and interpretation,
§66-325.

Restraints.

Restrictions on use, §66-345.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

Review of commitment.

Involuntary commitment, §66-337.

Rights of patients, §66-346.

Attorneys at law, §66-346.

Communication and visitation,
§66-346.

Denial of rights, §66-346.

Detention without hearing,
§66-326.

Disclosure of information, §66-348.

Enumeration of rights, §66-346.

Exercise of civil rights, §66-346.

Habeas corpus, §66-347.

Humane care and treatment,
§66-344.

Mail.

Right to communicate by mail,
§66-346.

Notice, §66-346.

Personal property.

Right to own, use or wear
certain personal property,
§66-346.

Records, §66-346.

Refuse specific modes of treatment,
§66-346.

Restraints.

Restrictions on use, §66-345.

Seclusion.

Restrictions on, §66-345.

Violation of patients' rights.

Misdemeanors, §66-349.

Penalty, §66-349.

Seclusion.

Restrictions on, §66-345.

Security medical program generally,
§§66-1301 to 66-1318.

Termination of commitment.

Involuntary commitment, §66-337.

Transportation.

Involuntary commitment, §66-330.

Treatment.

Federal facilities.

Involuntary commitment,
§66-331.

Involuntary commitment.

Transfer of patients between
certain in-patient treatment
facilities, §66-334.

Liability for care and treatment
costs, §66-355.

Responsibility for care of patient,
§66-327.

Right to humane care and
treatment, §66-344.

MENTALLY ILL —Cont'd**Hospitalization of mentally ill**

—Cont'd

United States.

Involuntary commitment.

Care and treatment in federal facility, §66-331.

Venue.

Involuntary commitment.

Hearings, §66-329.

Visitation rights.

Exercise of civil rights, §66-346.

Right to communication and visitation, §66-346.

Voluntary admissions.

Denial of admission, §66-318.

Money found on mentally ill persons.

Disposition, §66-352.

Persons qualifying for voluntary admission, §66-318.

Refusal of admission, §66-318.

Release of voluntary in-patients, §66-319.

Right to release on application, §66-320.

Exceptions, §66-320.

Writ of habeas corpus, §66-347.

Hospitals.

State hospitals generally, §§66-114 to 66-119.

Idaho state school and hospital.

State hospitals generally, §§66-114 to 66-119.

Incompetency of mentally ill person.

Hospitalization of mentally ill.

Requires separate proceeding, §66-355.

Instructions regarding mental health treatment.

Declarations, §§66-601 to 66-613.

Interstate compact on mental health, §§66-1201 to 66-1205.

After-care or supervision, §66-1201.

Applicability of provisions, §66-1201.

Compact administrator, §§66-1201, 66-1202.

Appointment, §§66-1201, 66-1202.

Contents of compact, §66-1201.

Copies.

Transmission of copies of act, §66-1205.

Dangerous or potentially dangerous patient escapees, §66-1201.

Definitions, §66-1201.

Eligibility for treatment, §66-1201.

Enactment of compact, §66-1201.

MENTALLY ILL —Cont'd**Interstate compact on mental health —Cont'd**

Finances, §66-1204.

Payments, §66-1204.

Purpose of compact, §66-1201.

Relationship of patient with institution, §66-1201.

Rights of patients, §66-1201.

Supplementary agreements, §§66-1201, 66-1203.

Required approval, §66-1203.

Transmission of copies of act, §66-1205.

Transportation of patients, §66-1201.

Involuntary commitment.

Hospitalization of mentally ill

generally, §§66-317 to 66-355.

Security medical program.

Patients from other institutions, §66-1316.

Jurisdiction.

Hospitalization of mentally ill.

Commitment proceedings, §66-328.

State hospitals.

Under jurisdiction of board of health and welfare, §66-116.

Liability.

Hospitalization of mentally ill.

Care and treatment costs, §66-355.

Exemptions from liability, §66-341.

Liability of relatives, §66-354.

Mentally ill person with assets sufficient to pay expenses, §66-354.

Mail.

Hospitalization of mentally ill.

Right to communicate by mail, §66-346.

Mechanical restraints.

Security medical program, §66-1313.

Medical facility.

Security medical program, §§66-1301 to 66-1318.

Mental hospital earnings reserve fund, §66-1101A.**Mental hospital income fund, §66-1102.****Mental hospital permanent endowment fund, §66-1101.**

Constitution, §66-1101.

Created, §66-1101.

Established, §66-1101.

Limitation on use, §66-1101.

Support and maintenance of State Hospital South, §66-1101.

MENTALLY ILL —Cont'd**Misdemeanors.**

- Hospitalization of mentally ill.
- Violation of patients' rights, §66-349.

Money.

- Hospitalization of mentally ill.
- Liability of relatives, §66-354.
- Mentally ill person with assets sufficient to pay expenses, §66-354.
- Money found on mentally ill persons.
- Disposition, §66-352.
- Repayment of money on discharge of patient, §66-351.

Notice.

- Hospitalization of mentally ill.
- Change in disposition, §66-342.
- Involuntary commitment.
- Medical, security or behavioral needs, §66-330.
- Place of treatment, §66-330.
- Transfer of patients between certain in-patient treatment facilities, §66-334.
- Rights of patients, §66-346.

Orders.

- Hospitalization of mentally ill.
- Involuntary commitment, §66-329.
- Petition for reexamination of order, §66-343.

Outpatient commitment, §66-339A.

- Defined, §66-317.
- Hearing, §66-339B.
- Noncompliance with court order, §66-339C.

Penalties.

- Hospitalization of mentally ill.
- Violation of rights of patients, §66-349.

Personal property.

- Hospitalization of mentally ill.
- Right to own, use or wear certain personal property, §66-346.

Petitions.

- Hospitalization of mentally ill.
- Detention pending commitment proceedings, §66-326.
- Involuntary commitment.
- Petition for reexamination of order, §66-343.
- Writ of habeas corpus, §66-347.

Physical examinations.

- Hospitalization of mentally ill.
- Involuntary commitment.
- Newly admitted patients, §66-333.

MENTALLY ILL —Cont'd**Preferences regarding mental**

- health treatment, §§66-601 to 66-613.

Prisons and prisoners.

- Commitment of mentally ill convicts, §66-335.

Property.

- Charitable institutions commission.
- Transfer of property to board of health and welfare, §66-117.

Records.

- Hospitalization of mentally ill.
- Rights of patients, §66-346.

Rehospitalization.

- Patients conditionally released from in-patient treatment facilities, §66-339.

Relatives.

- Hospitalization of mentally ill.
- Liability of relatives, §66-354.

Release of involuntarily committed patients.

- Conditional release, §66-338.
- Rehospitalization of patients conditionally released from in-patient treatment facilities, §66-339.

Release of voluntary in-patients.

- Hospitalization of mentally ill, §66-319.
- Right to release on application, §66-320.

Reports.

- State hospitals.
- Board of health and welfare.
- Annual report, §66-118.

Residence.

- Hospitalization of mentally ill.
- Construction and interpretation of terms "residence," "residing" or "resides," §66-325.

Review of commitment.

- Hospitalization of mentally ill.
- Involuntary commitment, §66-337.

Rights of patients.

- Hospitalization of mentally ill, §66-346.
- Attorneys at law, §66-346.
- Communication and visitation, §66-346.
- Denial of rights, §66-346.
- Disclosure of information, §66-348.
- Enumeration of rights, §66-346.
- Exercise of civil rights, §66-346.
- Habeas corpus, §66-347.
- Humane care and treatment, §66-344.

MENTALLY ILL —Cont'd**Rights of patients —Cont'd**

Hospitalization of mentally ill
—Cont'd

Mail.

Right to communicate by mail,
§66-346.

Notice, §66-346.

Personal property.

Right to own, use or wear
certain personal property,
§66-346.

Records, §66-346.

Refuse specific modes of treatment,
§66-346.

Restraints.

Restrictions on use, §66-345.

Seclusion.

Restrictions on, §66-345.

Violation of patients' rights.

Misdemeanors, §66-349.

Penalty, §66-349.

Interstate compact on mental health,
§66-1201.

Security medical program, §66-1310.

Humane care and treatment,
§66-1311.

Security medical program,

§§66-1301 to 66-1318.

Acquittal.

Persons acquitted of crimes on
basis of mental illness or
defect.

Commitment to security medical
program, §66-1304.

Administrator.

Appointment by state board of
corrections, §66-1302.

Powers and duties, §66-1303.

Qualifications, §66-1302.

Admissions.

Source of residents, §66-1304.

Care of patients.

Right to humane care and
treatment, §66-1311.

Standards for treatment, §66-1312.

Charges.

Evaluation, treatment and care of
residents.

Recovery of expenses, §66-1309.

Citation of chapter.

Idaho security medical program
act, §66-1315.

Civil rights of patients, §66-1310.

Right to humane care and
treatment, §66-1311.

Commitment.

Final decisions, §66-1306.

MENTALLY ILL —Cont'd**Security medical program —Cont'd**

Contracts.

Interstate contracts, §66-1314.

Costs.

Recovery of expenses, §66-1309.

Dangerous and mentally ill persons.

Defined, §66-1305.

Source of residents, §66-1304.

Definitions.

Dangerous and mentally ill
persons, §66-1305.

Designation, §66-1301.

Discharge of patients.

Final decision, §66-1306.

Duties of administrator, §66-1303.

Establishment, §66-1301.

Final decision, §66-1306.

Interstate contracts, §66-1314.

Involuntary commitment, §66-1304.

Final decision, §66-1306.

Patients from other institutions,
§66-1316.

Review of involuntary treatment,
§66-1317.

Source of residents, §66-1304.

Location, §66-1301.

Mechanical restraints, §66-1313.

Noncorrectional facilities.

Transfer to, §66-1318.

Patients from other institutions,
§66-1316.

Powers and duties of administrator,
§66-1303.

Return of patient, §66-1307.

Rights of patients, §66-1310.

Humane care and treatment,
§66-1311.

Short title.

Idaho security medical program
act, §66-1315.

Source of residents, §66-1304.

State board of corrections.

Appointment of administrator,
§66-1302.

Establishment, operation and
maintenance of institutions,
§66-1301.

Title of chapter.

Idaho security medical program
act, §66-1315.

Transferred patients.

Return of patient, §66-1307.

Transfer to noncorrectional facilities,
§66-1318.

Transportation.

Expenses and responsibility for
transportation of patients,
§66-1308.

MENTALLY ILL —Cont'd**Security medical program —Cont'd**

Treatment.

Review of involuntary treatment,
§66-1317.

Right to humane care and
treatment, §66-1311.

Standards for treatment, §66-1312.

Trial.

Determination of mental
competency to stand trial,
§66-1304.

Pretrial or presentence procedure.

Psychological diagnosis and
recommendations, §66-1304.

**State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**

Application of funds for necessary,
incidental expenses, §66-502.

Creation of patient's trust fund,
§66-501.

Custody of money, §66-503.

Disposition of money after death,
discharge or escape, §66-503.

Duty of superintendent or manager,
§66-503.

Establishment of patient's trust fund,
§66-501.

Use of money in fund by patients,
§66-502.

State board of corrections.

Security medical program.

Appointment of administrator,
§66-1302.

Establishment, operation and
maintenance of institution,
§66-1301.

State hospitals, §§66-114 to 66-119.

Board of health and welfare.

Annual report, §66-118.

Charitable institutions commission.

Transfer of powers and duties to
board, §66-114.

Transfer of property to board,
§66-117.

Conflicts of interest.

Pecuniary interest in contracts
forbidden, §66-119.

Jurisdiction.

Institutions under jurisdiction of
board, §66-116.

Management and control of state
hospitals by board, §§66-116,
66-118.

Pecuniary interest in contracts
forbidden, §66-119.

Powers and duties of board,
§66-118.

MENTALLY ILL —Cont'd**State hospitals —Cont'd**

Board of health and welfare —Cont'd

Reports.

Annual reports, §66-118.

Charitable institutions commission.

Powers and duties.

Transfer to board of health and
welfare, §66-114.

Property.

Transfer to board of health and
welfare, §66-117.

Conflicts of interest.

Board of health and welfare.

Pecuniary interest in contracts
forbidden, §66-119.

Contracts.

Board of health and welfare.

Pecuniary interest in contracts
forbidden, §66-119.

Idaho State School and Hospital.

Officially named, §66-115.

Treatment and care of
developmentally disabled
generally, §§66-401 to 66-414.

Jurisdiction.

Board of health and welfare.

Institutions under jurisdiction of
board, §66-116.

Names.

Officially named, §66-115.

Property.

Transfer to board of health and
welfare, §66-117.

Reports.

Board of health and welfare.

Annual report, §66-118.

State Hospital North.

Officially named, §66-115.

State Hospital South.

Officially named, §66-115.

Termination of commitment.

Hospitalization of mentally ill.

Involuntary commitment, §66-337.

Transferred patients.

Security medical program.

Return of patient, §66-1307.

Transportation.

Hospitalization of mentally ill.

Involuntary commitment, §66-330.

Security medical program.

Expenses and responsibility for
transportation of patients,
§66-1308.

Transportation of patients,
§66-1308.

Treatment.

Declarations for mental health
treatment, §§66-601 to 66-613.

MENTALLY ILL —Cont'd**Treatment —Cont'd**

- Hospitalization of mentally ill.
 - Federal facilities.
 - Involuntary commitment, §66-331.
 - Involuntary commitment.
 - Transfer of patients between certain in-patient treatment facilities, §66-334.
 - Liability for care and treatment costs, §66-355.
 - Right to humane care and treatment, §66-344.
- Security medical program.
 - Review of involuntary treatment, §66-1317.
 - Right to humane care and treatment, §66-1311.
 - Standards for treatment, §66-1312.

Trial.

- Security medical program.
 - Determination of mental competency to stand trial, §66-1304.
- Pretrial or presentence procedure.
 - Psychological diagnosis and recommendations, §66-1304.

Trusts and trustees.

- State asylum and sanitarium fund for patients, §§66-501 to 66-503.

United States.

- Hospitalization of mentally ill.
 - Involuntary commitment.
 - Care and treatment in federal facility, §66-331.

Venue.

- Hospitalization of mentally ill.
 - Involuntary commitment.
 - Hearings, §66-329.

Visitation rights.

- Hospitalization of mentally ill.
 - Exercise of civil rights, §66-346.
 - Right to communication and visitation, §66-346.

Voluntary admissions.

- Hospitalization of mentally ill generally, §§66-317 to 66-355.

Writ of habeas corpus.

- Hospitalization of mentally ill, §66-347.

MENTALLY RETARDED.**Hospitalization of mentally ill, §§66-317 to 66-355.**

See **MENTALLY ILL.**

Interstate compact on mental health, §§66-1201 to 66-1205.

See **MENTALLY ILL.**

MENTALLY RETARDED —Cont'd**Treatment and care of developmentally disabled, §§66-401 to 66-414.**

See **DEVELOPMENTAL DISABILITIES.**

MILITARY AFFAIRS.**Home for veterans, §§66-901 to 66-907.****Income tax.**

- Extensions for filing returns, §63-3033.
- Retirement benefits.
 - Deductions, §63-3022A.

Memorials.

- Servicemen's memorials, §§65-101 to 65-106.

Servicemen's memorials, §§65-101 to 65-106.**Tax commission.**

- Military service by members, §63-104.

Veterans.

- Service officers, §§65-601, 65-602.
- Veterans' home, §§66-901 to 66-907.
- See **VETERANS.**

MINES AND MINING.**Definitions.**

- Net profits, §63-2802.

Liens.

- Taxation of profits of mines.
 - Collection of tax lien, §63-2811.

Penalties.

- Taxation of profits of mines.
 - Penalty for disclosure of confidential information, §63-2807.
 - Penalty for false statement, §63-2806.

Perjury.

- Taxation of profits of mines.
 - False statements constitute perjury, §63-2805.

Profits of mines.

- Taxation on profits, §§63-2801 to 63-2811.

Property taxes.

- Exemption of mining claims not patented, §63-602F.

Sales tax.

- Production exemption, §63-3622D.

Taxation.

- Assessments.
 - Assessment book.
 - Preparation by assessor, §63-2809.

MINES AND MINING —Cont'd**Taxation —Cont'd**

Assessments —Cont'd

General duties of officers as to
assessment of net profits,
§63-2810.

Without statement, §63-2808.

Claims.

Valuation for taxation, §63-2801.

Collection.

Tax lien, §63-2811.

County assessors.

Duties, §63-2810.

County auditors.

Duties, §63-2810.

County board of equalization.

Duties, §63-2810.

Definitions.

Net profits, §63-2802.

Examination of books.

Authority of assessor, §63-2806.

Confidential information, §63-2807.

Disclosure of information.

Penalty for disclosure, §63-2807.

Exemptions.

Improvements, buildings,
structures, etc., not exempt
from act, §63-2801.

False statements.

Penalties, §63-2806.

Perjury, §63-2805.

Inspections.

Authority of assessor to examine
books and accounts, §63-2806.

Liens.

Collection of tax lien, §63-2811.

Machinery, §63-2801.

Net profits.

Assessment book, §63-2809.

Defined, §63-2802.

General duties of officers as to
assessment, §63-2810.

Statements, §63-2803.

Assessment without statement,
§63-2808.

False statements constitute
perjury, §63-2805.

Statement as to entire group,
§63-2804.

Verification, §63-2803.

Oaths.

Verification of statement of net
profits, §63-2803.

Officers.

General duties of officers,
§63-2810.

Penalties.

Disclosure of confidential
information, §63-2807.

MINES AND MINING —Cont'd**Taxation —Cont'd**

Penalties —Cont'd

False statements, §63-2806.

Perjury.

False statement constitute perjury,
§63-2805.

Sales tax.

Production exemption, §63-3622D.

Statements.

Assessment without statement,
§63-2808.

Net profits, §63-2803.

Assessment without statement,
§63-2808.

False statements constitute
perjury, §63-2805.

Statement as to entire group,
§63-2804.

Penalty for false statement,
§63-2806.

State tax commission.

Duties, §63-2810.

Surface ground.

Valuation for taxation, §63-2801.

Tax collectors.

Duties, §63-2810.

Valuation of mines for taxation,
§63-2801.

Valuation of mines for taxation,
§63-2801.

MISDEMEANORS.

**Cigarette and tobacco products
taxes,** §63-2512.

**Declarations for mental health
treatment.**

Altering, forging, etc., §66-612.

Fuels tax, §63-2443.

Doing business without license,
§§63-2433, 63-2443.

Special fuels permits, §63-2441.

Licenses.

License taxes.

Failure to comply with provisions,
§63-2309.

Mentally ill.

Declarations for mental health
treatment.

Altering, forging, etc., §66-612.

Hospitalization of mentally ill.

Violation of patients' rights,
§66-349.

Property taxes, §63-1402.

Deferral of tax.

False claims.

Knowingly filing, §63-721.

Sales tax.

Absorption or assumption of tax by
retailer, §63-3619.

MISDEMEANORS —Cont'd**Sales tax —Cont'd**

Sellers.

Engaging in business without permit, §63-3620.

Taxation.

Cigarette and tobacco products taxes, §63-2512.

Fuels tax, §63-2443.

Doing business without license, §§63-2433, 63-2443.

Special fuels permits, §63-2441.

Gasoline purchases by retail dealers, §63-2411.

License tax on electricity.

False statements, §63-2707.

Sales tax.

Absorption or assumption of tax by retailer, §63-3619.

Permit violations, §63-3620.

Use tax, §63-3621.

Evasion through exemption certificates, §63-3622.

Veterans.

Demanding, collecting or receiving fees in violation of article, §65-303.

MODULAR BUILDINGS.**Building code.**

Sales tax.

Definition, §63-3606A.

MONEY.**Mentally ill.**

Hospitalization of mentally ill.

Liability of relatives, §66-354.

Mentally ill person with assets sufficient to pay expenses, §66-354.

Money found on mentally ill persons.

Disposition, §66-352.

Repayment of money on discharge of patient, §66-351.

MORTGAGES.**Income tax.**

Information returns, §63-3037.

Property taxes.

Exempt property.

Certain secured dues and credits, §63-602M.

Veterans.

Furnishing without fee, §65-301.

MOTION PICTURES.**Sales tax.**

Media production project tax rebate, §63-3622TT.

MOTOR FUELS TAX.

Generally, §§63-2401 to 63-2444.

See FUELS TAX.

MOTOR VEHICLES.**Cigarette and tobacco products taxes.**

Authority to search, §63-2514.

Contraband articles.

Seizure of vehicle, §63-2513.

Fuels tax, §§63-2401 to 63-2444.

See FUELS TAX.

Property taxes.

Exemption of motor vehicles properly registered, §63-602J.

Sales tax.

Agreements with department of transportation.

Authority of state tax commission to enter into, §63-3634A.

Defined, §63-3606B.

Exemptions, §63-3622R.

Occasional sales.

Exemptions, §63-3622K.

Taxation.

Exemptions from taxation.

Occasional sales.

Exempt from sales tax, §63-3622K.

Fuels tax, §§63-2401 to 63-2444.

MULTISTATE TAX COMPACT,

§§63-3701 to 63-3709.

See TAXATION.

MUNICIPAL CORPORATIONS.**Property taxes.**

Valuation of property.

Notification, §63-1312.

Sales tax.

Use tax.

Exemptions, §63-3621.

Taxing districts.

Anticipation of revenue by taxing districts, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

Use tax.

Exemptions, §63-3621.

Veterans.

Addition of points to competitive examination ratings, §65-504.

Basic preference in initial appointment, §65-504.

Failure or refusal to give preference in hiring, §65-506.

MUNICIPAL CORPORATIONS

—Cont'd

Veterans —Cont'd

Officials to observe preference in hiring, §65-505.

Public employers.

Preference given veterans, spouses, widows and widowers, §65-503.

N

NAMES.

Idaho State School and Hospital.

Officially named, §66-115.

State Hospital North.

Officially named, §66-115.

State Hospital South.

Officially named, §66-115.

NATIONAL ENGINEERING AND ENVIRONMENTAL LABORATORY.

Sales tax.

Research and development at Idaho national engineering and environmental laboratory, §63-3622BB.

NATURAL GAS.

Cooperative natural gas associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE NATURAL GAS ASSOCIATIONS.

NEGLIGENCE.

Income tax.

Additions to tax in case of negligent disregard of rules, §63-3046.

NEWSPAPERS.

Sales tax.

Advertisements sold by publisher of newspaper.

Tangible personal property not to include, §63-3616.

Exemptions.

Equipment to produce newspapers, §63-3622T.

NONPROFIT CORPORATIONS.

Property taxes.

Low income property owned by nonprofit organization, exemption, §63-602GG.

NONRESIDENTS.

Cigarette and tobacco products taxes.

Jurisdiction, §63-2517.

Income tax.

Computing tax of part-year or nonresident individuals, trusts and estates, §63-3026A.

Corporate directors, officers and shareholders.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Defined, §63-3014.

Jurisdiction over nonresidents.

Prosecution for deficiency assessed and payable, §63-3065A.

Partnerships.

Election by nonresident partners as to taxable income, §63-3022L.

Returns.

Persons required to make return, §63-3030.

Trust or estate.

Individuals who are beneficiaries of.

Election as to taxable income, §63-3022L.

Jurisdiction.

Income tax.

Prosecution for deficiency assessed and payable, §63-3065A.

NORTH IDAHO CHILDREN'S HOME.

Income tax credit for

rehabilitation facilities,
§63-3029C.

NOTARIES PUBLIC.

Veterans.

Performance without fee, §65-301.

NOTICE.

Cigarettes and tobacco products taxes.

Sales of contraband articles, §63-2513.

Conservators.

Disabled persons.

Treatment and care of developmentally disabled.

Appointment of conservators, §66-404.

NOTICE —Cont'd**Declarations for mental health treatment.**

Withdrawal of agent, §66-607.

Disabled persons.

Treatment and care of developmentally disabled.

Appointment of guardian or conservators, §66-404.

Guardians.

Disabled persons.

Treatment and care of developmentally disabled.

Appointment of guardian, §66-404.

Income tax.

Additional tax due, §63-3045A.

Adjustment of federal or state tax liability, §63-3069.

Deficiency, §63-3045.

Distrain.

Notice of levy and distraint, §63-3061A.

Mentally ill.

Declarations for mental health treatment.

Withdrawal of agent, §66-607.

Hospitalization of mentally ill.

Change in disposition, §66-342.

Involuntary commitment.

Medical, security or behavioral needs, §66-330.

Place of treatment, §66-330.

Transfer of patients between certain in-patient treatment facilities, §66-334.

Rights of patients, §66-346.

Property taxes.

Election to create new taxing district, §63-802C.

Taxing districts.

Hearings on fee increases, §63-1311A.

Tax notice.

Charges other than property taxes, §63-902.

Sales tax.

Retail food store.

Petition for relief from responsibility of retaining invoices of nontax sales.

Tax commission to give notice of determinations, §63-3624.

Sellers.

Permits.

Revocation, §63-3620.

NOTICE —Cont'd**Taxing districts.**

Election to create new taxing district, §63-802C.

O**OCCUPANCY TAX.**

Newly constructed and occupied structures, §63-317.

OFFENSES.

Crimes and offenses generally.

See CRIMES AND OFFENSES.

OIL AND GAS.

Cooperative natural gas associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE NATURAL GAS ASSOCIATIONS.

Sales tax.

Exemptions.

Heating materials exempted, §63-3622G.

ORDERS.**Disabled persons.**

Treatment and care of developmentally disabled.

Petition for reexamination of order of guardianship or commitment, §66-408.

Protective proceedings, §66-405.

Income tax.

Failure to comply with order.

Contempt, §63-3043.

Mentally ill.

Hospitalization of mentally ill.

Involuntary commitment, §66-329.

Petition for reexamination of order, §66-343.

Taxation.

Prepaid taxes.

Board of county commissioners, §63-1603.

ORDINANCES.**County sales tax.**

Ordinance assessing, §63-2604.

ORGAN DONORS.**Income tax.**

Tax credit for live organ donation expenses, §63-3029K.

ORTHODONTIC APPLIANCES.

Sales tax exemption, §63-3622N.

ORTHOPEDIC APPLIANCES.

Sales tax exemption, §63-3622N.

P**PARTIES.****Cigarette and tobacco products taxes.**

Actions against state of Idaho.

State tax commission may be made party defendant, §63-2516.

Income tax.

Actions against state of Idaho.

State tax commission made party defendant, §63-3074.

PARTNERSHIPS.**Electric power.**

License tax on electricity.

Statement of electric generating company, §63-2701.

Income tax.

Defined, §63-3006B.

Nonresident partners.

Election as to taxable income, §63-3022L.

Additional tax required when filing income tax return, §63-3082.

Returns.

Failure to file partnership return.

Penalty, §63-3046B.

Required, §63-3030.

Sales tax.

Responsibility for taxes, §63-3627.

PART-YEAR RESIDENTS.**Income tax.**

Defined, §63-3013A.

Individuals, trusts and estates.

Computing taxable income, §63-3026A.

PATENTS.**Income tax.**

Corporations.

Computing taxable income, §63-3027.

Property taxes.

Exemption of intangible personal property, §63-602L.

PAWNBROKERS.

License tax, §63-2303.

PERJURY.**Mines and mining.**

Taxation of profits of mines.

False statements constitute perjury, §63-2805.

PERJURY —Cont'd**Property taxes.**

Tax deeds.

Notice of pending issue.

Affidavit of compliance, §63-1005.

PERSONAL PROPERTY.**Income tax.**

Tax deficiencies.

Distrain on personal property, §63-3057.

Mentally ill.

Hospitalization of mentally ill.

Right to own, use or wear certain personal property, §66-346.

Property taxes.

Assessments, §63-207.

List of taxable personal property, §63-302.

Transient personal property, §63-313.

Classes of property, §63-204.

Collection.

Special provisions for collection of taxes on personal property, §63-904.

Defined, §63-201.

Destruction of personal property, §63-1310.

Intangible personal property.

Exemption, §63-602L.

Payment.

Special provisions, §63-904.

Removal, sale or repossession of personal property before payment of property taxes on rolls, §63-1014.

Sale of personal property for taxes, §§63-1101 to 63-1108.

Transient personal property.

Assessment, §63-313.

Defined, §63-201.

Payment of taxes on.

No extension to be granted, §63-904.

Unpaid personal property taxes as lien on real property, §63-504.

PETITIONS.**Disabled persons.**

Treatment and care of developmentally disabled.

Reexamination of order of guardianship or commitment, §66-408.

PETITIONS —Cont'd**Income tax.**

Returns.

Failure to file return.

Petition for mandamus,
§63-3030A.**Sales tax.**

Redetermination, §63-3631.

Retail food stores.

Relief from responsibility of
retaining invoices of nontax
sales, §63-3624.**Taxation.**

Prepayment of taxes.

Petition for permission to prepay
taxes, §63-1602.**PHARMACISTS AND
PHARMACIES.****Prescription drugs.**

Sales tax.

Exemptions, §63-3622N.

**PHOTOGRAPHS AND
PHOTOGRAPHY.****Property taxes.**

Reproduction of records, §63-218.

PHYSICAL EXAMINATIONS.**Mentally ill.**

Hospitalization of mentally ill.

Involuntary commitment.

Newly admitted patients,
§66-333.**PHYSICIANS AND SURGEONS.****Declarations for mental health
treatment.**

Generally, §§66-601 to 66-613.

See **MENTALLY ILL.****PIPELINES.****Fuels tax.**

Reports.

Instate pipeline terminal and
storage report, §63-2437.**PLEADINGS.****Licenses.**

License taxes.

Suits for recovery of license tax.

Plea of recovery in civil actions,
§63-2308.**POLITICAL SUBDIVISIONS.****Sales tax.**

Use tax.

Exemptions, §63-3621.

POLLUTION.**Sales tax.**

Exemptions.

Control equipment exempt,
§63-3622X.**POPULAR NAMES AND SHORT
TITLES.****Corporate headquarters incentive
act of 2005**, §§63-2901 to 63-2910.**Illegal drug stamp tax**, §§63-4201 to
63-4211.**Income tax act**, §§63-3001 to 63-3088.**Property tax deferral act**, §§63-712
to 63-721.**Sales tax act**, §§63-3601 to 63-3641.**Security medical program act**,
§§66-1301 to 66-1318.**Small employer incentive act**,
§§63-4401 to 63-4409.**Special district dissolution act**,
§§63-4101 to 63-4106.**Tobacco products tax act**, §§63-2551
to 63-2561.**POSTCONSUMER WASTE
EQUIPMENT.****Income tax credits**, §63-3029D.**Property tax exemptions**,
§63-602CC.**POSTINDUSTRIAL WASTE
EQUIPMENT.****Income tax credits**, §63-3029D.**Property tax exemptions**,
§63-602CC.**PREFERENCES REGARDING
MENTAL HEALTH
TREATMENT.****Declarations**, §§66-601 to 66-613.**PREPAYMENT OF TAXES**,
§§63-1601 to 63-1608.See **TAXATION.****PRESCRIPTION DRUGS.****Sales tax exemption**, §63-3622N.**PRESUMPTIONS.****Illegal drug stamp tax.**Validity and correctness of taxes and
penalties, §63-4208.**Income tax.**

Water's edge election, §63-3027D.

PRISONS AND PRISONERS.**Security medical program**,
§§66-1301 to 66-1318.See **MENTALLY ILL.****PROPERTY TAX DEFERRAL ACT**,
§§63-712 to 63-721.**PROPERTY TAXES.****Seeds.**Exemption of certain seeds shipped
out of state, §63-602S.

PROPERTY TAXES —Cont'd**Accounting for taxes collected,**
§63-812.

Unauthorized levy.

Setting aside, §63-809.

**Adjustment by county
commissioners,** §63-1303.

Late charges or interest, §63-1304.

Agents.

Assessments.

Listing of property by agent,
§63-306.**Agriculture.**

Exempt property.

Agricultural crops, §63-602R.

Fruits and vegetables held for
human consumption, and
seeds, shipped out of state,
§63-602S.Land actively devoted to
agriculture, §63-604.Machinery and equipment,
§63-602EE.Speculative portion of value of
agricultural land, §63-602K.**Air pollution.**

Exempt property.

Facilities for air pollution control,
§63-602P.**All property subject to taxation,**
§63-601.**Appeals.**

Equalization of assessments.

Appeal from county board of
equalization, §63-511.Right of taxpayer to appeal,
§63-501A.Operating property assessments,
§63-407.State tax commission valuations,
§63-409.**Assessments.**Adjustment of assessed value,
§63-316.

All property subject to, §63-601.

Classes of property for purpose of,
§63-204.

County valuation program.

Duties of county assessor, §63-314.

Description of property, §63-214.

Legal description and map of
boundaries to be recorded and
filed, §63-215.Tax numbers for metes and bounds
descriptions, §63-210.Double assessments prohibited,
§63-213.**PROPERTY TAXES —Cont'd****Assessments —Cont'd**

Equalization of assessments.

Additional assessments, §63-503.

Appeals.

Appeal from county board of
equalization, §63-511.Right of taxpayer to appeal,
§63-501A.

County assessors.

Attendance, §63-501.

County commissioners.

Meeting as board of equalization,
§63-501.Duties of board of equalization,
§63-502.

Evidence.

Production, §63-505.

Function of board of equalization,
§63-502.

New assessments, §63-503.

Notice to taxpayer, §63-506.

Notice to taxpayer of new
assessments and changes,
§63-506.Notification of valuation due to
state tax commission, §63-510.

Records.

Proceedings, §63-507.

Rolls.

Abstracts of rolls, §63-509.

Completion of property roll after
equalization, §63-508.Delivery of rolls to county
auditor, §63-509.State tax commission, §§63-109,
63-110.

Unpaid personal property taxes.

Lien on real property, §63-504.

Estates, §63-212.

Listing of property by fiduciary,
§63-306.

Improvements.

Exempt and railroad rights-of-way
lands, §63-309.

Informality of procedure.

Not illegal on account of
informality, §63-1306.Listing of property by owner, agent
or fiduciary, §63-306.

Manufactured homes, §63-303.

Real property.

Reversal of declaration which
treats manufactured home
as real property, §63-305.When manufactured homes
constitute, §63-304.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Market value, §63-205.

New construction.

Amount of taxable market value,
§63-301A.

Rules pertaining to market value,
§63-208.

School districts.

Determination of adjusted
market value for assessment
purposes for, §63-315.

Metes and bounds descriptions.

Tax numbers for, §63-210.

New construction, §63-301A.

Notice.

Equalization of assessments.

Notice to taxpayer of new
assessments and changes,
§63-506.

Taxpayers valuation assessment
notice, §63-308.

Occupancy tax, §63-317.

Operating property, §63-405.

Annual statement by operator,
§63-404.

Appeal of assessment, §63-407.

Appeals from state tax commission
valuations, §63-409.

Attendance at assessment hearing,
§63-406.

Certification of value to counties,
§63-410.

County assessor.

Nonoperating property assessed
by, §63-402.

Escaped assessments, §63-410.

Operator as representative of
owner, §63-403.

Private railcar fleets.

Special provisions, §63-411.

Reexamination of value on
complaint on assessor,
§63-408.

State tax commission, §§63-207,
63-401.

Appeals from valuations,
§63-409.

Arbitrary assessment, §63-404.

Procedure for assessing, §63-405.

Reexamination of value on
complaint on assessor,
§63-408.

Ownership identification, §63-307.

Personal property, §63-207.

List of taxable personal property,
§63-302.

PROPERTY TAXES —Cont'd**Assessments —Cont'd**

Personal property —Cont'd

Transient personal property,
§63-313.

Plat record of assessor, §63-209.

Real property, §63-207.

Rolls, §63-301.

Completion and delivery, §§63-310,
63-311.

Affidavit to completed roll,
§63-312.

Equalization of assessments.

Abstracts of rolls, §63-509.

Completion of property roll after
equalization, §63-508.

Delivery of rolls to county
auditor, §63-509.

Missed property roll, §63-301.

Completion and delivery,
§63-311.

Affidavit to completed roll,
§63-312.

New construction roll, §63-301A.

Subsequent property roll, §63-301.

Completion and delivery,
§63-311.

Affidavit to completed roll,
§63-312.

State tax commission.

Adjustment of assessed value,
§63-316.

Changes in assessments.

Certificate by chairman, §63-111.

Completion of assessment program
by, §63-316.

Equalization of assessments,
§§63-109, 63-110.

Market value.

Rules pertaining to, §63-208.

Operating property, §63-401.

Appeals from commission
valuations, §63-409.

Arbitrary assessment, §63-404.

Procedure, §63-405.

Reexamination of value on
complaint on assessor,
§63-408.

Payments for assistance with
property tax assessment,
§63-112.

Taxing districts.

Applicability of provisions to taxing
districts, §63-1301.

Tax numbers for metes and bounds
descriptions, §63-210.

Time of assessment, §63-301.

Transient personal property, §63-313.

PROPERTY TAXES —Cont'd**Attorney general.**

Suits by attorney general, §63-1403.

Unauthorized levy.

Action to set aside, §63-809.

Bonds, surety.

Liability of officials on bonds,
§63-1402.

Budgets.

Certification of budgets in dollars,
§63-803.

Copy of budget.

Filing, §63-804.

Limitation on budget requests,
§63-802.

Maximum amount for consolidated
districts, §63-802.

Notice of budget meeting of taxing
district, §63-802A.

**Business inventory exemptions,
§63-602W.****Canal companies.**

Exemption of operating property,
§63-602N.

**Cancellation of property tax,
§§63-711, 63-1302.****Casualty loss.**

Cancellation of taxes, §63-711.

Exemptions, §63-602X.

Cemeteries.

Property exempt from taxation.

Public cemeteries, §63-602F.

Charities.

Exempt property, §63-602C.

Classes of property, §63-204.**Clothing.**

Exemption of wearing apparel in
certain cases, §63-602I.

Collection, §63-812.

Attorney general.

Suits by, §63-1403.

Personal property.

Special provisions for collection of
taxes on, §63-904.

Professional services.

Costs as lien on property,
§63-1314.

Taxing districts.

Applicability of provisions to taxing
districts, §63-1301.

Computation of taxes.

County auditor.

Duties, §63-811.

Computer programs.

Exemption of custom computer
programs.

Intangible personal property
exemption, §63-602L.

PROPERTY TAXES —Cont'd**Conveyances.**

Tax deeds.

Effect of deed as conveyance,
§63-1009.

Copyrights.

Exemption of intangible personal
property, §63-602L.

**Corporate headquarters incentive
act.**

Rebates, §63-2909.

Recapture of credit for failure to
meet criteria, §63-2907.

County auditors.

Bonds, surety.

Liability of auditor upon official
bond, §63-1402.

Computation of taxes.

Duties of auditor, §63-811.

Levy of taxes.

New taxing units.

Duties of auditor, §63-307.

Settlement by county auditor,
§63-1202.

County treasurers.

Delinquent taxes.

Duties of treasurer, §63-907.

Credits.

Order of court or board of tax
appeals, §63-1305.

Criminal offenses, §63-1402.**Crops.**

Exempt property, §63-602R.

Customer lists.

Exemption of intangible personal
property, §63-602L.

Decedents' estates.

Assessment of property of estates,
§63-212.

Deferral, §§63-712 to 63-721.

Applications, §63-714.

Citation, §63-712.

Definitions, §63-713.

Delinquency in repayment.

Tax deed, §63-719.

Denial of application.

Grounds, §63-714.

Effect, §63-716.

Erroneous deferrals.

Recovery, §63-720.

False claims.

Knowingly filing as misdemeanor,
§63-721.

Improper deferrals.

Recovery, §63-720.

Interest, §63-716.

Payment of interest, §63-718.

Lien, §63-716.

PROPERTY TAXES —Cont'd**Deferral —Cont'd**

Payment of deferred tax and interest,
§63-718.

Delinquency in repayment.

Tax deed, §63-719.

Procedure.

Applicable provisions, §63-715.

Recovery of erroneous and other
improper deferrals, §63-720.

Reimbursement by state tax
commission, §63-717.

Termination.

Events terminating deferral,
§63-718.

Title of act, §63-712.

Definitions, §63-201.

Agricultural land, §63-602K.

Agricultural machinery and
equipment, §63-602EE.

Exemptions.

Exclusive or exclusively, §63-602.

Occupied, §63-317.

Property tax deferral act, §63-713.

Residential property, §63-602H.

Taxable value, §63-811.

Tax relief, §63-701.

Delinquent taxes.

County treasurer.

Duties of treasurer, §63-907.

Effect of delinquency, §§63-1001,
63-1003.

Entries, §63-907.

Interest.

Rate, §63-1001.

When interest assessed, §63-903.

Liens, §63-1003.

Payment, §63-1002.

Segregated property, §63-1004.

Removal of personal property before
payment of taxes on rolls,
§63-1014.

Sale of personal property, §63-1012.

Sale or repossession of personal
property before payment of taxes
on rolls, §63-1014.

Conveyance.

Effect of tax deed as, §63-1009.

Evidentiary effect, §63-1008.

Issuance, §63-1006.

Notice of pending issuance,
§63-1005.

Notice of pending issue of tax deed,
§63-1005.

Possession under tax deed
conclusive as to regularity of
proceedings, §63-1011.

PROPERTY TAXES —Cont'd**Delinquent taxes —Cont'd**

Sale or repossession of personal
property before payment of taxes
on rolls —Cont'd

Redemption, §63-1007.

Apportionment of proceeds from,
§63-1015.

Deeds upon redemption,
§63-1010.

When delinquency occurs, §63-903.

Delivery services.

Filing by private services, §63-217.

Deposits.

Exempt property, §63-602L.

Description of property, §63-214.

Legal description and map of
boundaries to be recorded and
filed, §63-215.

Tax numbers for metes and bounds
descriptions, §63-210.

Disaster relief.

Filing and payment extensions as
disaster relief, §63-114.

Distrain.

Warrant of distraint, §63-1013.

Defined, §63-201.

Service, §63-1013.

**Double assessments prohibited,
§63-213.****Education.**

Exemption of property used for
school or educational purpose,
§63-602E.

Elections.

Creation of new taxing district.

Notice of election, §63-802C.

Defeat of special taxing district or
bond proposal.

Barred to subsequent elections for
specified time, §63-1309.

Electronic funds transfers, §63-115.**Electronic returns and documents.**

Filing, §63-115.

Enforcement of provisions.

Powers and duties of assessor,
§63-1401.

Suits by attorney general, §63-1403.

Erroneous levy.

Corrective action, §63-810.

Evidence.

Equalization of assessments.

Production of evidence, §63-505.

Reproduction of records, §63-218.

Tax deeds.

Effect as evidence, §63-1008.

Possession under tax deed
conclusive as to regularity of
proceedings, §63-1011.

PROPERTY TAXES —Cont'd**Exemptions.**

- Agricultural crops, §63-602R.
- Agricultural land.
 - Land actively devoted to agriculture, §63-604.
- Speculative portion of value, §63-602K.
- Agricultural machinery and equipment, §63-602EE.
- Air pollution control facilities, §63-602P.
- Benevolent corporations or societies, §63-602C.
- Bonds, §63-602L.
- Business inventory, §63-602W.
- Canal companies.
 - Operating property of, §63-602N.
- Capital stock, §63-602L.
- Casualty loss, §63-602X.
- Cemeteries.
 - Public cemeteries, §63-602F.
- Change of status of property.
 - Effect, §63-602Y.
- Charitable corporations or societies, §63-602C.
- Charter school purposes, §63-602E.
- Definitions.
 - Exclusive or exclusively, §63-602.
- Deposits, §63-602L.
- Electrical power.
 - Property used for generating and delivering for irrigation or drainage purposes, §63-602O.
- Electric or gas utilities pumping water for irrigation or drainage, §63-603.
- Exceptional situations, §63-602AA.
- Fraternal corporations or societies, §63-602C.
- Fruits and vegetables held for human consumption, and seeds, shipped out of state, §63-602S.
- Generally, §63-602.
- Government property, §63-602A.
- Homeowner's exemption.
 - Residential improvements.
 - Improvements never occupied, §63-602W.
- Homestead, §63-602G.
- Hospitals, §63-602D.
- Household goods, wearing apparel and other personal effects, §63-602I.
- Intangible personal property, §63-602L.
- Irrigation districts.
 - Operating property of, §63-602N.

PROPERTY TAXES —Cont'd**Exemptions —Cont'd**

- Irrigation water and structures, §63-602N.
- Libraries.
 - Public libraries, §63-602F.
- Low income property owned by nonprofit organization, §63-602GG.
- Manufactured homes.
 - Use under dealer's plate or as sheep or cow camp, §63-602DD.
- Mining claims not patented, §63-602F.
- Motor vehicles properly registered, §63-602J.
- Natural gas energy.
 - Property used for transmitting and delivering for irrigation or drainage purposes, §63-602O.
- Occupancy tax, §63-602Z.
- Personal property manufactured or processed in this state and actually sold and shipped out of state, §63-602T.
- Personal property shipped into state and stored in original package, §63-602V.
- Personal property shipped into state and stored in public or private warehouse structure, and designated for shipment out of state, §63-602U.
- Public lands.
 - Possessory rights to, §63-602F.
- Recovery of improperly claimed exemptions.
 - Homestead exemption, §63-602G.
- Recycling equipment, §63-602CC.
- Religious corporations or societies, §63-602B.
- Remediated land.
 - Partial exemption, §63-602BB.
- School or educational purpose, §63-602E.
- Secured dues and credits, §63-602M.
- Significant capital investments, §63-602HH.
- Small employer growth exemption, §63-606A.
- Telephone lines.
 - Certain cooperative telephone lines, §63-602Q.
- Unused infrastructure from nonoperational business, §63-602II.
- Vessels properly registered, §63-602J.

PROPERTY TAXES —Cont'd**Exemptions —Cont'd**

Water pollution control facilities,
§63-602P.

Wildlife habitat.

Land used to protect wildlife,
§63-605.

Wind energy.

Operating property of producer of
electricity by means of,
§63-602JJ.

Extensions.

Filing and payment extensions as
disaster relief, §63-114.

Fees.

Taxing districts.

Advertisement of and hearing on
fee increases, §63-1311A.

Services provided by, §63-1311.

Fiduciaries.

Assessments.

Listing of property by fiduciary,
§63-306.

Filing by mail or private delivery services, §63-217.**Fines.**

Tax deeds.

Notice of pending issue.

Affidavit of compliance.

False swearing, §63-1005.

Forest lands and forest products.

Tax on, §§63-1701 to 63-1708.

Franchises.

Exemption of intangible personal
property, §63-602L.

Fruits.

Exempt property.

Fruits held for human
consumption, and seeds,
shipped out of state, §63-602S.

Good will.

Exemption of intangible personal
property, §63-602L.

Hardship.

Cancellation of taxes, §63-711.

Homeowner's exemption.

Residential improvements.

Improvements never occupied,
§63-602W.

Homestead exemption, §63-602G.**Hospitals.**

Exempt property, §63-602D.

Household goods.

Exempt property, §63-602I.

Improvements.

Assessments.

Exempt and railroad rights-of-way
lands, §63-309.

PROPERTY TAXES —Cont'd**Improvements —Cont'd**

Defined, §63-201.

Exempt property.

Residential improvements.

Business inventory exemption
for residential improvements
never occupied, §63-602W.

Lien of taxes on improvements.

Destroying lien by removing
improvements.

Prohibited acts, §63-206.

Occupancy tax.

Exemptions, §63-602Z.

Informality of procedures.

Not illegal on account of informality,
§63-1306.

Interest, §63-718.

Adjustment of late charges or
interest, §63-1304.

Deferral of tax, §63-716.

Payment of interest, §63-718.

Delinquent taxes.

Rate, §63-1001.

When interest assessed, §63-903.

Inventory.

Exemption of business inventory,
§63-602W.

Irrigation.

Exempt property.

Electrical or natural gas energy.

Property used for generating and
delivering for irrigation or
drainage purposes,
§63-602O.

Electric or gas utilities pumping
water for irrigation or
drainage, §63-603.

Irrigation water and structures,
§63-602N.

Operating property of irrigation
district, §63-602N.

Irrigation districts.

Exemption of operating property,
§63-602N.

Land remediation.

Exemption for remediated land,
§63-602BB.

Lawful money of the United States.

Defined, §63-201.

Payment, §63-901.

Levy of taxes.

Annual levy by county
commissioners, §63-805.

Annual state property tax levy,
§63-801.

Erroneous levy.

Corrective action, §63-810.

PROPERTY TAXES —Cont'd**Levy of taxes —Cont'd**

- Limitation on tax charges, §63-802.
- New taxing units, §63-807.
- Record of proceedings, §63-808.
- Special tax levies, §63-1313.
- Taxing districts.
 - Applicability of provisions to, §63-1301.
- Unauthorized levy.
 - Action to set aside, §63-809.
 - Notification by state tax commission, §63-809.

Libraries.

- Exemption of public libraries, §63-602F.

Liens, §63-206.

- Deferral of tax, §63-716.
- Delinquent taxes, §63-1003.
- Professional services for collection.
 - Costs, §63-1314.
- Recovery of improperly claimed exemptions.
 - Homestead exemption, unpaid recovered taxes, §63-602G.
- Unpaid personal property taxes.
 - Lien on real property, §63-504.

Limitation of actions.

- Appeal of assessments, §63-501A.
- Payment under protest.
 - Action for recovery, §63-1308.
- Recovery of improperly claimed exemptions.
 - Homestead exemption, §63-602G.
- Tax relief.
 - Erroneous claims.*
 - Recovery, §63-708.

Limitation on property taxes, §63-1313.**Low income property owned by nonprofit organization, exemption, §63-602GG.****Mail.**

- Filing material by mail, §63-217.

Manufactured homes.

- Assessments, §63-303.
 - Real property.
 - Reversal of declaration which treats manufactured home as real property, §63-305.
 - When manufactured homes constitute, §63-304.
- Defined, §63-201.
- Exemptions.
 - Use under dealer's plate or as sheep or cow camp, §63-602DD.
- Occupancy tax, §63-317.

PROPERTY TAXES —Cont'd**Market value.**

- Assessments, §63-205.
 - New construction, §63-301A.
- Rules pertaining to market value, §63-208.
- School districts.
 - Determination of adjusted market value for assessment purposes for, §63-315.
- Defined, §63-201.
- Limitation on property taxes, §63-1313.

Metes and bounds.

- Tax numbers for metes and bounds descriptions, §63-210.

Mines and mining.

- Exemption of mining claims not patented, §63-602F.

Misdemeanors, §63-1402.**Mortgages.**

- Exempt property.
 - Certain secured dues and credits, §63-602M.

Motor vehicles.

- Exemption of motor vehicles properly registered, §63-602J.

Municipal corporations.

- Valuation of property.
 - Notification, §63-1312.

New construction, §63-301A.**Notice.**

- Assessments.
 - Equalization of assessments.
 - Notice to taxpayer of new assessments and changes, §63-506.
 - Taxpayers valuation assessment notice, §63-308.
- Election to create new taxing district, §63-802C.
- Equalization of assessments.
 - Notification of valuation due to state tax commission, §63-510.
- Sale of personal property for taxes, §63-1102.
- Tax deeds.
 - Notice of pending issue, §63-1005.
- Taxing districts.
 - Hearings on fee increases, §63-1311A.
- Tax notice, §63-902.
 - Charges other than property taxes, §63-902.

Oaths.

- Administration of oaths.
 - Enforcement powers of assessor, §63-1401.

PROPERTY TAXES —Cont'd

Occupancy tax, §63-317.

Exemptions, §63-602Z.

Operating property.

Assessments, §63-405.

Annual statement by operator,
§63-404.

Appeal of assessment, §63-407.

Appeals from state tax commission
valuations, §63-409.

Attendance at assessment hearing,
§63-406.

Certification of value to counties,
§63-410.

County assessor.

Nonoperating property assessed
by, §63-402.

Escaped assessments, §63-410.

Operator as representative of
owner, §63-403.

Private railcar fleets.

Special provisions, §63-411.

Reexamination of value on
complaint on assessor,
§63-408.

State tax commission, §§63-207,
63-401.

Appeals from valuations,
§63-409.

Arbitrary assessment, §63-404.

Procedure for assessing, §63-405.

Reexamination of value on
complaint on assessor,
§63-408.

Classes of property, §63-204.

Defined, §63-201.

Operating property.

Arbitrary assessment by state tax
commission, §63-404.

Patents.

Exemption of intangible personal
property, §63-602L.

Payment.

Delinquent taxes, §63-1002.

Segregated property, §63-1004.

Interim payment account, §63-906.

Lawful money of the United States,
§63-901.

Payment under protest, §63-1308.

Personal property.

Special provisions, §63-904.

Proof of payment, §63-1306.

Receipts, §63-905.

Interim payment account.

Receipt for deposits, §63-906.

When taxes payable, §63-903.

PROPERTY TAXES —Cont'd

Perjury.

Tax deeds.

Notice of pending issue.

Affidavit of compliance,
§63-1005.

Personal property.

Assessments, §63-207.

List of taxable personal property,
§63-302.

Transient personal property,
§63-313.

Classes of property, §63-204.

Collection.

Special provisions for collection of
taxes on personal property,
§63-904.

Defined, §63-201.

Destruction of personal property,
§63-1310.

Intangible personal property.

Exemption, §63-602L.

Payment.

Special provisions, §63-904.

Removal, sale or repossession of
personal property before
payment of property taxes on
rolls, §63-1014.

Sale of personal property for taxes,
§§63-1101 to 63-1108.

Transient personal property.

Assessment, §63-313.

Defined, §63-201.

Payment of taxes on.

No extension to be granted,
§63-904.

Unpaid personal property taxes as
lien on real property, §63-504.

Photographs and photography.

Reproduction of records, §63-218.

Property subject to, §63-203.

Public officers and employees.

Neglect or refusal to perform duties.

Removal of officers, §63-1405.

Rules and orders of state tax
commission.

Compliance of public officers,
§63-1404.

Public utilities.

Defined, §63-201.

Exempt property.

Electric or gas utilities pumping
water for irrigation or
drainage, §63-603.

Railroads.

Assessment of operating property,
§63-405.

Defined, §63-201.

PROPERTY TAXES —Cont'd**Railroads —Cont'd**

- Improvements on railroad rights-of-way lands.
- Assessment, §63-309.
- Private railcar fleets.
- Defined, §63-201.
- Operating property.
- Special provisions, §63-411.

Receipts, §63-902.

- Delinquent taxes.
- Payment, §63-1002.
- Interim payment account.
- Receipt for deposits, §63-906.
- Taxes paid, §63-905.

Recordation.

- Legal description and map of boundaries, §63-215.

Records.

- Equalization of assessments.
- Proceedings, §63-507.
- Levy of taxes.
- Proceedings of county commissioners, §63-808.
- Plat record of assessor, §63-209.
- Replication of official records, §63-202.
- Reproduction of records, §63-218.

Recycling.

- Exemptions for recycling equipment, §63-602CC.

Refunds, §63-1302.

- Order of court or board of tax appeals, §63-1305.

Religious organizations.

- Property exempt, §63-602B.

Remediated land.

- Partial exemption, §63-602BB.

Residential improvements.

- Exempt property.
- Business inventory exemption for improvements never occupied, §63-602W.

Returns.

- Electronic returns and documents, §63-115.
- Rounding off to whole dollar amounts, §63-113.

Rights-of-way.

- Exemption of intangible personal property, §63-602L.

Rounding off.

- Whole dollar amounts, §63-113.

Sale of personal property for taxes, §§63-1101 to 63-1108.

- Additional property, §63-1106.
- Bill of sale, §63-1104.

PROPERTY TAXES —Cont'd**Sale of personal property for taxes —Cont'd****County.**

- Purchase by, §63-1108.

Delinquent taxes.

- Sale of personal property, §63-1012.

- Sale or repossession of personal property before payment of taxes on rolls, §63-1014.

Disposition of proceeds, §63-1103.

- Excess proceeds, §63-1107.

Notice, §63-1102.**Proceeds.**

- Disposition, §63-1103.

- Excess proceeds, §63-1107.

Insufficient proceeds.

- Sale of additional property, §63-1106.

Public auction, §63-1102.**Purchase by county, §63-1108.****Resale, §63-1105.****Seizure of property, §63-1101.****Sales tax.****Levy of property tax.**

- No annual state levy in period when sales tax in force, §63-801.

- No state property tax when sales tax in force, §63-216.

School districts.

- Assessment ratios and determination of adjusted market value for assessment purposes for school districts, §63-315.

Searches and seizures.**Refusal to pay property tax.**

- Seizure of property, §63-1101.

Secured transactions.**Exempt property.**

- Certain secured dues and credits, §63-602M.

Service of process.**Distrain.**

- Warrant of distraint, §63-1013.

Settlements.**Revenue officers.**

- County auditor, §63-1202.

- County tax collector, §63-1201.

Significant capital investments.**Exemption.**

- Net taxable value of property in excess of eight million dollars, §63-602HH.

Small employer growth exemption, §63-606A.

PROPERTY TAXES —Cont'd**State board of equalization.**

State tax commission to serve as,
§63-105A.

State lands.

Abstract of state lands, §63-211.
Equity in state property, §63-309.
Exemption of government property,
§63-602A.

Exemption of possessory rights to
public lands, §63-602F.

State tax commission.

Assessment of property.
Adjustment of assessed value,
§63-316.
Changes in assessments.
Certificate by chairman, §63-111.
Completion of assessment program
by commission, §63-316.
Equalization of assessments,
§§63-109, 63-110.
Market value.
Rules pertaining to, §63-208.
Operating property, §§63-207,
63-401.
Appeals from commission
valuations, §63-409.
Arbitrary assessment, §63-404.
Procedure, §63-405.
Reexamination of value on
complaint on assessor,
§63-408.
Payments for assistance with
property tax assessment,
§63-112.
Duties, §63-105A.
Powers, §63-105A.
Rounding off.
Whole dollar amounts, §63-113.
Rules and orders of state tax
commission.
Compliance of public officers,
§63-1404.
Tax relief.
Recovery of erroneous claims,
§63-708.
Reimbursement by state tax
commission, §63-709.
Procedure after reimbursement,
§63-710.

Unauthorized levy.

Notification by state tax
commission, §63-809.

Uniform property rolls and related
documents, §63-219.

State treasurer.

Transmission of funds to state
treasurer, §63-1307.

PROPERTY TAXES —Cont'd**Statute of limitations.**

Appeal of assessments, §63-501A.
Payment under protest.
Action for recovery, §63-1308.
Recovery of improperly claimed
exemptions.
Homestead exemption, §63-602G.
Tax relief.
Erroneous claims.
Recovery, §63-708.

Stock and stockholders.

Exemption of capital stock, §63-602L.

Surviving spouses.

Tax relief.
Filing of claim by spouse of
deceased claimant, §63-702.

Tax charges.

Limitation on, §63-802.

Tax deeds.

Conveyances.
Effect of deed as conveyance,
§63-1009.
Evidence, §63-1008.
Issuance, §63-1006.
Notice of pending issuance,
§63-1005.
Possession under tax deed conclusive
as to regularity of proceedings,
§63-1011.
Redemption, §63-1007.
Apportionment of proceeds from,
§63-1015.
Deeds upon redemption, §63-1010.

Taxing districts.

Applicability of provisions to,
§63-1301.
Defined, §63-201.
Fees for services, §63-1311.
Increases, §63-1311A.

Tax relief, §§63-701 to 63-711.

Agents.
Filing claim on behalf of living
claimant, §63-702.
Amount of tax reduction, §63-704.
Changes, §63-705.
Appeal of disapproved claim,
§63-707.
Cancellation of taxes, §63-711.
Right not relinquished by filing
claim, §63-703.

Claims.

Approval.
Procedure after claim approval,
§63-707.
Disapproval of claim, §63-707.

PROPERTY TAXES —Cont'd**Tax relief —Cont'd****Claims —Cont'd**

Erroneous claims.

Procedure after determination
that claim erroneous,
§63-707.

Recovery, §63-708.

Filing procedure, §63-703.

Personal nature of right to file,
§63-702.

Signing, §63-703.

Time for filing, §63-706.

Cost-of-living modification, §63-705.

Deferral of property tax, §§63-712 to
63-721.

Definitions, §63-701.

Disapproval of claim, §63-707.

Erroneous claims.

Procedure after claim determined
to be erroneous, §63-707.

Recovery, §63-708.

Guardian or other representative.

Filing claim on behalf of claimant,
§63-702.

Hardship.

Cancellation of taxes, §63-711.

Income limitations.

Changes, §63-705.

Personal nature of right to file claim,
§63-702.

Property tax reduction roll, §63-707.
Protest.

Disapproval of claim, §63-707.

Reimbursement by state tax
commission, §63-709.

Procedure after*reimbursement,
§63-710.

Surviving spouses.

Filing of claim by spouse of
deceased claimant, §63-702.

Time requirements for filing claims,
§63-706.

Two or more individuals meeting
qualifications of claimant,
§63-703.

Widow or widower succeeding to
interest of deceased person.

Filing claim, §63-702.

Tax sales.

Sale of personal property for taxes,
§§63-1101 to 63-1108.

Telephone corporations.

Assessment of operating property,
§63-405.

Telephones.

Exempt property.

Certain cooperative telephone
lines, §63-602Q.

PROPERTY TAXES —Cont'd**Temporary officers.**

Acts by temporary officers valid,
§63-1405.

Time.

When taxes payable, §63-903.

Trademarks.

Exemption of intangible personal
property, §63-602L.

Trade secrets.

Exemption of intangible personal
property, §63-602L.

Transient personal property.

Assessments, §63-313.

Defined, §63-201.

Payment of taxes on.

No extension to be granted,
§63-904.

United States.

Exemption of government property,
§63-602A.

Unused infrastructure from nonoperational business.

Exemption, §63-602II.

Vessels.

Exemption of vessels properly
registered, §63-602J.

Warehouses.

Exempt property.

Personal property shipped into
state and stored in public or
private warehouse structure,
and designated for shipment
out of state, §63-602U.

Warrant of distraint, §63-1013.

Defined, §63-201.

Service, §63-1013.

Warrants for payment of money.

Warrant redemption fund, §63-806.

Water companies.

Assessment of operating property,
§63-405.

Water quality.

Exempt property.

Facilities for water pollution
control, §63-602P.

Wearing apparel.

Exempt property, §63-602I.

Wildlife.

Exempt property.

Land used to protect wildlife and
wildlife habitat, §63-605.

Wind energy.

Exemptions.

Operating property of producer of
electricity by means of wind
energy, §63-602JJ.

PROPERTY TAXES —Cont'd**Zoning.**

Value of residential property in certain zoned areas, §63-602H.

PROPERTY TAX RELIEF, §§63-701 to 63-711.

PROSTHETIC DEVICES.

Sales tax exemption, §63-3622N.

PSYCHOLOGICAL DISORDERS.

Persons displaying evidence of mental illness or psychological disorders.

Security medical program generally, §§66-1301 to 66-1318.

See **MENTALLY ILL**.

PUBLIC ASSISTANCE AND WELFARE.**Food stamps.**

Sales tax.

Purchases made with federal food stamps.

Exempted purchases, §63-3622FF.

Income tax.

Persons receiving public assistance payments exempt from tax, §63-3086.

PUBLICATION.**Income tax.**

Statistics.

Publication of statistics and law by commission, §63-3039.

PUBLIC OFFICERS AND EMPLOYEES.**Property taxes.**

Neglect or refusal to perform duties.

Removal of officers, §63-1405.

Rules and orders of state tax commission.

Compliance of public officers, §63-1404.

Veterans.

Addition of points to competitive examination ratings, §65-504.

Applicability of act limited, §65-507.

Basic preference in initial appointment, §65-504.

Failure or refusal to give preference in hiring, §65-506.

Officials to observe preference, §65-505.

Preference given veterans, spouses, widows and widowers by public employers, §65-503.

Relation to other laws, §65-510.

PUBLIC UTILITIES.**Property taxes.**

Defined, §63-201.

Exempt property.

Electric or gas utilities pumping water for irrigation or drainage, §63-603.

Sales tax.

Exemptions, §63-3622F.

PUBLIC WORKS CONTRACTORS.**Contracts.**

Taxation.

Payment of taxes prerequisite for public contract, §63-1503.

Definitions.

Taxation, §63-1501.

Liability.

Taxation.

Personal liability of officers of contracting units failing to comply with or violating provisions, §63-1505.

Penalties.

Taxation.

Payment of taxes.

Officers of contracting units failing to comply with or violating provisions, §63-1505.

Taxation, §§63-1501 to 63-1505.

Board of county commissioners.

Duty to withhold taxes, §63-1504.

Conditions precedent to contract for public works, §63-1502.

Contracting units.

Conditions precedent to contract for public works, §63-1502.

Defined, §63-1501.

Contractors.

Defined, §63-1501.

Definitions, §63-1501.

Payment of taxes.

Contractor to pay or secure taxes, §63-1503.

Evidence of payment required for contract for public works, §63-1502.

Penalties.

Dereliction of duty by officers, §63-1505.

Provisions of contract, §63-1503.

Public officers.

Duty to withhold taxes, §63-1504.

Penalty for dereliction of duty, §63-1505.

State board of examiners.

Duty to withhold taxes, §63-1504.

PUBLIC WORKS CONTRACTORS

—Cont'd

Taxation —Cont'd

Taxing units.

Defined, §63-1501.

Duty to withhold taxes, §63-1504.

Violations.

Penalties, §63-1505.

Withholding taxes.

Duty of public officers to withhold,
§63-1504.**R****RAILROADS.****Fuels tax.**Reports of importations by carriers,
§63-2436.**Property taxes.**Assessment of operating property,
§63-405.

Defined, §63-201.

Improvements on railroad
rights-of-way lands.

Assessment, §63-309.

Private railcar fleet.

Defined, §63-201.

Private railcar fleets.

Operating property.

Special provisions, §63-411.

Sales tax.

Exemptions.

Rolling stock, §63-3622CC.

Parts for, §63-3622DD.

RATES AND CHARGES.**Income tax,** §63-3024.**Mentally ill.**

Security medical program.

Evaluation, treatment and care of
residents.

Recovery of expenses, §66-1309.

Veterans.

Veteran's home, §66-907.

REAL PROPERTY.**Liens.**Taxes levied on real property
constitute lien, §63-206.**Manufactured homes.**

Property taxes.

Manufactured homes to constitute
real property, §63-304.**REBATES.****Corporate headquarters incentive
act.**

Property tax incentives, §63-2909.

Sales and use tax rebates, §63-2908.

REBATES —Cont'd**Small employer incentive act.**Sales and use tax incentives,
§63-4408.**RECEIPTS.****Property taxes,** §63-902.

Delinquent taxes.

Payment, §63-1002.

Interim payment account.

Receipt for deposits, §63-906.

Taxes paid, §63-905.

RECEIVERS.**Income tax.**

Returns.

Required, §63-3030.

RECORDATION.**Property taxes.**Legal description and map of
boundaries, §63-215.**Taxpayer interviews.**

Rights, §63-4008.

Veterans.

Discharge papers.

Free recording or indexing,
§65-301.**RECORDS.****Cigarette and tobacco products
taxes.**

Required, §§63-2511, 63-2555.

Shipments and deliveries from public
warehouse of first destination,
§63-2558.**Fuels tax.**

Required records, §63-2429.

Special fuels dealers, §63-2429.

Income tax.Examination of records to determine
correctness of return, §63-3042.**Mentally ill.**

Hospitalization of mentally ill.

Rights of patients, §66-346.

Property taxes.

Equalization of assessments.

Proceedings, §63-507.

Levy of taxes.

Proceedings of county
commissioners, §63-808.

Plat record of assessor, §63-209.

Replication of official records,
§63-202.

Reproduction of records, §63-218.

Sales tax.

Required records, §63-3624.

Taxation.

Cigarette and tobacco products taxes.

Required, §§63-2511, 63-2555.

RECORDS —Cont'd**Taxation —Cont'd**

Cigarette and tobacco products taxes
—Cont'd

Shipments and deliveries from
public warehouse of first
destination, §63-2558.

Fuels tax.

Required records, §63-2429.

Special fuels dealers, §63-2429.

Income tax.

Examination of records to
determine correctness of
return, §63-3042.

Sales tax.

Required records, §63-3624.

RECREATIONAL VEHICLES.

Fuels tax, §63-2401.

RECYCLING.**Income tax.**

Credit for qualified equipment
utilizing post-consumer or
post-industrial waste,
§63-3029D.

Property taxes.

Exemptions for recycling equipment,
§63-602CC.

REFUNDS.**Fuels tax.**

Aircraft engine fuel.

Gasoline other than aircraft engine
fuel, §63-2408.

Duplicate taxes assessed outside of
state, §63-2410.

Gasoline, §63-2410.

Payment of special fuels tax directly
to vendor, §63-2423.

REHABILITATION.

Income tax of facilities, §63-3029C.

RELIGION.**Sales tax.**

Incidental sales by religious
corporations or societies.

Exempt, §63-3622KK.

RELIGIOUS ORGANIZATIONS.

Property tax exemption, §63-602B.

REPORTS.**Fuels tax.**

Distributors, §63-2406.

Licensed gaseous fuels distributor,
§63-2427B.

Importations by carriers, §63-2436.

Instate pipeline terminal and storage
report, §63-2437.

REPORTS —Cont'd**Mentally ill.**

State hospitals.

Board of health and welfare.

Annual report, §66-118.

RESEARCH.**Income tax.**

Credits for research activities
conducted in this state,
§63-3029G.

Sales tax exemption.

Property used for research and
development, §63-3622RR.

**RESIDENTIAL CARE OR
ASSISTED LIVING
FACILITIES.****Developmentally disabled**

treatment and care generally,
§§66-401 to 66-414.

Treatment and care of

developmentally disabled
generally, §§66-401 to 66-414.

See DEVELOPMENTAL
DISABILITIES.

RESIDENTS.**Mentally ill.**

Hospitalization of mentally ill.

Construction and interpretation of
terms "residence" "residing" or
"resides," §66-325.

RETAIL SALES.

Sales tax, §§63-3601 to 63-3638A.

RETIREMENT.**Income tax.**

Deduction of certain retirement
benefits, §63-3022A.

REVENUE.

Department of revenue and
taxation.

See TAXATION.

RIGHTS OF WAY.**Property taxes.**

Exemption of intangible personal
property, §63-602L.

RONALD MCDONALD HOUSE.**Sales tax.**

Exemption of renting of place to
sleep, §63-3622O.

RULES AND REGULATIONS.**Board of tax appeals.**

Adoption of rules, §63-3808.

Fuels tax.

Adoption and enforcement by tax
commission, §63-2427.

RULES AND REGULATIONS

—Cont'd

Income tax.

State tax commission, §63-3039.

Sales tax.

Tax commission.

Commission to prescribe extent to which ruling or regulation to be applied without retroactive effect, §63-3624.

Veterans.

Adoption, §65-204.

S**SALARIES.****Tax commission,** §63-102.**Veterans.**

Service officers, §65-602.

SALES.**Cigarette and tobacco products taxes.**

Contraband article, §63-2513.

Defined, §63-2551.

Preservation of invoices, §63-2556.

Containers.

Exemptions, §63-3622E.

Income tax.

Deficient payments.

Distrain on personal property, §63-3057.

Property taxes.

Sale of personal property for taxes, §§63-1101 to 63-1108.

See PROPERTY TAXES.

Sales tax.

General provisions, §§63-3601 to 63-3638A.

See SALES TAX.

Tax sales.

Personal property, §§63-1101 to 63-1108.

See PERSONAL PROPERTY.

SALES TAX, §§63-3601 to 63-3641.**Additions,** §63-3634.**Administration of act.**

Duty of state tax commission, §63-3624.

Advertisements.

Assumption or absorption of tax by retailer, §63-3619.

Separate display of tax and list price, §63-3619.

Space sold by publisher of newspaper or magazine.

Tangible personal property not to include, §63-3616.

SALES TAX —Cont'd**Aerial passenger tramways.**

Exemption, §63-3622Y.

Aged persons.

Senior citizen meals, §63-3622J.

Agreements to collect and remit.

Persons not otherwise liable to collect and remit taxes, §63-3620B.

Agriculture.

Production exemption, §63-3622D.

Directly used or consumed in or during farming operation.

Defined, §63-3622D.

Aircraft.

Exemptions.

Transporting passengers or freight for hire, §63-3622GG.

Alcoholic beverages.

Exemptions.

Liquor sales exempted, §63-3622M.

Payment to liquor account, §63-3638A.

Amusement devices.

Defined, §63-3623B.

Permit fee in lieu of tax, §63-3623B.

Appeals.

Refunds.

Appeal of tax commission decision denying claim for refund, §63-3626.

Audits and auditors.

Commission to employ auditors to examine taxpayer's records and books, §63-3624.

Bona fide purchasers.

Liability of successors to business, §63-3628.

Buildings.

Modular buildings.

Defined, §63-3606A.

Bullion.

Exemptions, §63-3622V.

Canal companies.

Exemption of nonprofit organizations, §63-3622O.

Use tax, §63-3621.

Carriers.

Exemptions.

Purchases shipped out-of-state by common carrier, §63-3622P.

Churches.

Church meals exempted, §63-3622J.

Religious literature exempted, §63-3622I.

Citation of act, §63-3601.**Clean rooms.**

Definitions, §63-3622NN.

Exemptions, §63-3622NN.

SALES TAX —Cont'd**Clothes.**

Nonsale clothier.

Exemption of nonprofit organizations, §63-3622O.

Coin operated devices.

Exempted sales, §63-3622L.

Collection.

Agreements with persons not otherwise liable to collect, §63-3620B.

Distribution of money collected, §63-3638A.

Duty of retailer to collect, §63-3619.

Income tax act.

Collection procedures, §63-3635.

Jeopardy determinations, §63-3630.

Period of limitation on collection, §63-3633.

Sales involving fraction of a dollar, §63-3619.

Commemorative silver medallions.

Exemption, §63-3622PP.

Computation.

Monthly computation of rate, §63-3619.

Computer software.

Included in definition of tangible personal property, §63-3616.

Confidentiality of information.

Release of information about specific transactions not prevented, §63-3634.

Contractors.

Sales of tangible personal property to contractors.

Purchasing property for resale to United States.

Applicability of tax imposed, §63-3619.

Contracts.

Entered into before effective date of increased tax, §63-3640.

Out-of-state contracts.

Exemptions, §63-3622B.

Corporate headquarters incentive act.

Sales and use tax rebates, §63-2908.

Corporations.

Responsibility for taxes, §63-3627.

Counties.

County sales tax generally, §§63-2601 to 63-2605.

Use tax.

Exemptions, §63-3621.

Credits, §63-3626.

Interest, §63-3626.

Time limit, §63-3626.

SALES TAX —Cont'd**Criminal offenses.**

Sellers.

Permits.

Engaging in business without permit, §63-3620.

Decedents' estates.

Period of limitation on assessment and collection, §63-3633.

Definitions, §63-3602.

Amusement devices, §63-3623B.

Canal companies, §63-3622O.

Clean rooms, §63-3622NN.

Clothes, §63-3622O.

Computer software, §63-3616.

Custom computer program, §63-3616.

Directly used or consumed in or during farming operation, §63-3622D.

Drug, §63-3622N.

Durable medical equipment.

Prescription exemption, §63-3622N.

Educational institution, §63-3622O.

Farming, §63-3603.

Food banks or soup kitchens, §63-3622O.

Forest protective associations, §63-3622O.

Health-related entities, §63-3622O.

Hospital, §63-3622O.

Includes and including, §63-3605.

Literature, §63-3622I.

Logging, §63-3605A.

Media production project tax rebate, §63-3622TT.

Mining, §63-3605B.

Modular buildings, §63-3606A.

Motor vehicle, §63-3606B.

New manufactured homes, §63-3606.

Nonprofit organizations, §63-3622O.

Nonsale clothier, §63-3622O.

Occasional sales, §63-3622K.

Person, §63-3607.

Personal property.

Tangible personal property, §63-3616.

Practitioner, §63-3622N.

Promoter sponsored event, §63-3620C.

Prosthetic device.

Prescription exemption, §63-3622N.

Purchase, §63-3608.

Retailers, §63-3610.

Retailers engaged in business in this state, §63-3611.

Retail food stores, §63-3624.

SALES TAX —Cont'd**Definitions —Cont'd**

- Retail sales, §63-3609.
- Sale at retail, §63-3609.
- Sales, §63-3612.
- Sales price, §63-3613.
- Sellers, §63-3614.
- Storage, §63-3615.
- Substantially used in interstate commerce, §63-3622R.
- Tangible personal property, §63-3616.
- Taxpayers, §63-3618.
- In this state, §63-3604.
- Use, §63-3615.

Distribution of money collected, §§63-3638, 63-3638A.**Documents.**

- Exemption for official documents, §63-3622AA.

Education.

- Exemptions.
 - Driver's education program sponsored by nonprofit educational institution.
 - Motor vehicle temporarily donated to, §63-3622R.
 - Educational institutions.
 - Exemption of nonprofit organizations, §63-3622O.
 - Use tax, §63-3621.
 - School meals exempted, §63-3622J.

Electric power.

- Equipment used in alternative method of generating electricity.
- Rebate, §63-3622QQ.

Emergency medical service agencies.

- Exemption of sales to and purchases by, §63-3622O.

Enforcement of act.

- Applicability of income tax act enforcement procedures, §63-3635.
- Duty of state tax commission, §63-3624.

Exemption certificates.

- Retail purchases exempt from or not subject to tax imposed, §63-3622.

Exemptions.

- Aerial passenger tramways, §63-3622Y.
- Aircraft.
 - Transporting passengers or freight for hire, §63-3622GG.
- Bullion, §63-3622V.
- Certificates.
 - Criminal penalties, §63-3622.

SALES TAX —Cont'd**Exemptions —Cont'd****Certificates —Cont'd**

- Retail purchases exempt from or not subject to tax imposed, §63-3622.
- Church meals, §63-3622J.
- Clean rooms, §63-3622NN.
- Coin operated devices, §63-3622L.
- Commemorative silver medallions, §63-3622PP.
- Common carriers.
 - Purchases shipped out-of-state by common carrier, §63-3622P.
- Containers, §63-3622E.
- Electricity, equipment used in alternative method of generating, §63-3622QQ.
- Federal food stamps, §63-3622FF.
- Federal special supplemental food program for women, infants and children.
 - Purchases for, §63-3622EE.
- Funeral services, §63-3622U.
- Glider kits, §63-3622R.
- Heating materials, §63-3622G.
- Hunting or shooting sports, §63-3622SS.
- Idaho national engineering and environmental laboratory.
 - Research and development at laboratory, §63-3622BB.
- Indians.
 - Sale of tangible personal property occurring within boundaries of Indian reservations, §63-3622Z.
- Irrigation equipment and supplies, §63-3622W.
- Liquor sales, §63-3622M.
- Logging equipment, §63-3622JJ.
- Manufactured homes.
 - Used manufactured homes, §63-3622R.
- Media measurement services, §63-3622LL.
- Money-operated dispensing equipment, §63-3622II.
- Motor fuels subject to tax, §63-3622C.
- Motor vehicles, §63-3622R.
- Newspapers.
 - Equipment to produce newspapers, §63-3622T.
- Nonprofit organizations, §63-3622O.
 - Use tax, §63-3621.
- Occasional sales, §63-3622K.
- Official documents, §63-3622AA.

SALES TAX —Cont'd**Exemptions —Cont'd**

Out-of-state contracts, §63-3622B.

Out-of-state shipments, §63-3622Q.

Political subdivisions.

Use tax, §63-3621.

Pollution control equipment,
§63-3622X.

Prescription drugs, §63-3622N.

Production exemption, §63-3622D.

Not applicable to recreation-related
vehicles, §63-3622HH.

Prohibited taxes, §63-3622A.

Radio and television broadcasting
equipment, §63-3622S.

Railroad rolling stock, §63-3622CC.

Parts for, §63-3622DD.

Refunds, §63-3626.

Religious corporations or societies.

Incidental sales, §63-3622KK.

Religious literature, §63-3622I.

Research and development, property
used for, §63-3622RR.

School meals, §63-3622J.

Senior citizen meals, §63-3622J.

Snowgrooming and snowmaking
equipment, §63-3622Y.

State of Idaho.

Use tax, §63-3621.

Trailers.

Utility trailers, §63-3622R.

Use tax, §63-3621.

Utilities, §63-3622F.

Vending machines, §63-3622L.

De minimis sales, §63-3622L.

Vessels, §63-3622R.

Farming.

Defined, §63-3603.

Federal food stamps.

Purchases made with.

Exempted sales, §63-3622FF.

**Federal special supplemental food
program for women, infants
and children.**

Exempt purchases, §63-3622EE.

Food.

Retail food stores.

Petitions.

Relief from responsibility of
retaining invoices of nontax
sales, §63-3624.

Food banks.

Exemption of nonprofit organizations,
§63-3622O.

Use tax, §63-3621.

SALES TAX —Cont'd**Forests and forestry.**

Forest protective associations.

Exemption of nonprofit
organizations, §63-3622O.

Use tax, §63-3621.

Forms.

Sellers' permits, §63-3620.

Fraud.

Returns.

Limitation period upon assessment
and collection not applicable,
§63-3633.

Fuels tax.

Motor fuels subject to tax exempted
from chapter, §63-3622C.

Funds and accounts.

Money distributed to, §63-3638.

Funerals.

Exemptions.

Funeral services exempt,
§63-3622U.

Glider kits.

Exemption, §63-3622R.

Health-related entities.

Exemption of nonprofit organizations,
§63-3622O.

Use tax, §63-3621.

Hearings.

Sellers.

Permits.

Revocation, §63-3620.

Heat.

Purchase of material to produce heat
by burning.

Exemptions, §63-3622G.

Hospitals.

Exemption of nonprofit organizations,
§63-3622O.

Use tax, §63-3621.

Hunting or shooting sports.

Exemption, §63-3622SS.

**Idaho national engineering and
environmental laboratory.**

Exemptions, §63-3622BB.

Imports and exports.

Exemptions.

Out-of-state shipments, §63-3622Q.

Imposition, §63-3619.

Storage, use or consumption of
tangible personal property,
§63-3621.

Includes and including.

Defined, §63-3605.

Income tax.

Additions and penalties applied in
same manner, §63-3634.

SALES TAX —Cont'd**Income tax —Cont'd**

Collection and enforcement
procedure, §63-3635.

Independent living center.

Exemption of sales to and purchases
by, §63-3622O.

Indians.

Sale of tangible personal property
occurring within boundaries of
Indian reservations.

Exempted sales, §63-3622Z.

Interest.

Credits and refunds, §63-3626.

Deficient payments, §63-3632.

Irrigation and water rights.

Exemptions.

Equipment and supplies exempt,
§63-3622W.

Jeopardy determinations, §63-3630.

Redetermination, §63-3631.

Limitations.

Credits or refunds, §63-3626.

Period of limitation on assessment
and collection, §63-3633.

Limited liability companies.

Responsibility for taxes, §63-3627.

Livestock sold at livestock

markets, §63-3622MM.

Logging.

Defined, §63-3605A.

Exempted equipment and supplies,
§63-3622JJ.

Manufactured homes.

Exemptions.

Used manufactured homes,
§63-3622R.

New manufactured homes.

Defined, §63-3606.

Manufacturers.

Production exemption, §63-3622D.

Media measurement services.

Exemptions, §63-3622LL.

**Media production project tax
rebate, §63-3622TT.****Mines and mining.**

Mining defined, §63-3605B.

Production exemption, §63-3622D.

Misdemeanors.

Absorption or assumption of tax by
retailer, §63-3619.

Sellers.

Permits.

Engaging in business without
permit, §63-3620.

Modular buildings.

Defined, §63-3606A.

SALES TAX —Cont'd**Money-operated dispensing
equipment.**

Exemption, §63-3622II.

Motor vehicles.

Agreements with department of
transportation.

Authority to enter into, §63-3634A.

Defined, §63-3606B.

Exemptions, §63-3622R.

Occasional sales.

Exemptions, §63-3622K.

Multistate tax compact.

Elements of sales and use tax laws,
§63-3701.

General provisions, §§63-3701 to
63-3709.

See TAXATION.

Municipal corporations.

Use tax.

Exemptions, §63-3621.

**National engineering and
environmental laboratory.**

Research and development at Idaho
national engineering and
environmental laboratory,
§63-3622BB.

Newspapers.

Exemptions.

Equipment to produce newspapers,
§63-3622T.

Nonprofit organizations.

Defined, §63-3622O.

Exemptions, §63-3622O.

Use tax exemption, §63-3621.

Notice.

Retail food store.

Petition for relief from
responsibility of retaining
invoices of nontax sales.

Tax commission to give notice of
determinations, §63-3624.

Sellers.

Permits.

Revocation, §63-3620.

Occasional sales.

Defined, §63-3622K.

Exemptions, §63-3622K.

Official documents.

Exemptions, §63-3622AA.

Oil and gas.

Exemptions.

Heating materials exempted,
§63-3622G.

Out-of-state contracts.

Exemptions, §63-3622B.

Out-of-state shipments.

Exemptions, §63-3622Q.

SALES TAX —Cont'd**Partnerships.**

Responsibility for taxes, §63-3627.

Payment.

Deficient payments.

Determination of deficiency,
§63-3629.

Interest on deficiencies, §63-3632.

Redetermination, §63-3631.

Delinquent payments.

Additions and penalties, §63-3634.

Security for tax, §63-3625.

Period of limitation on assessment
and collection of taxes, §63-3633.

Refunds, §63-3626.

Security for tax, §63-3625.

When taxes due and payable,
§63-3623.

Penalties.

Applied in same manner as income
tax, §63-3634.

Exemption certificates.

Retail purchases exempt from or
not subject to tax, §63-3622.

Promoter sponsored events,
§63-3620C.

Permits.

Sellers, §63-3620, 63-3620A.

Person.

Defined, §63-3607.

Personal property.

Tangible personal property.

Defined, §63-3616.

Imposition and rate of tax,
§63-3621.

Petitions.

Redetermination, §63-3631.

Retail food stores.

Relief from responsibility of
retaining invoices of nontax
sales, §63-3624.

Pharmacists and pharmacies.

Exemptions.

Certain prescriptions exempted,
§63-3622N.

Political subdivisions.

Use tax.

Exemptions, §63-3621.

Pollution.

Exemptions.

Control equipment exempt,
§63-3622X.

Prescriptions.

Exemptions, §63-3622N.

Prices.

Sales price.

Defined, §63-3613.

SALES TAX —Cont'd**Prices —Cont'd**

Separate display of list price and tax,
§63-3619.

Production exemption, §63-3622D.

Directly used or consumed in or
during farming operation.

Defined, §63-3622D.

Not applicable to recreation-related
vehicles, §63-3622HH.

Prohibited taxes, §63-3622A.**Promoter sponsored events,
§63-3620C.****Property taxes.**

No state property tax when sales tax
is in force, §63-216.

Public utilities.

Exemptions, §63-3622F.

Purchase.

Defined, §63-3608.

Radio.

Exemptions.

Radio broadcasting equipment
exempted, §63-3622S.

Railroads.

Exemptions.

Rolling stock, §63-3622CC.

Parts for, §63-3622DD.

Rate of tax.

Amusement devices, §63-3623B.

Monthly computation, §63-3619.

Use tax on tangible personal
property, §63-3621.

Records.

Required records, §63-3624.

Refunds, §63-3626.**Release of information about
specific transactions, §63-3634.****Religion.**

Incidental sales by religious
corporations or societies.

Exempt, §63-3622KK.

Religious literature exempted,
§63-3622I.

Removal of property from state.

Jeopardy determinations, §63-3630.

Research and development.

National engineering and
environmental laboratory,
§63-3622BB.

**Research and development,
property used for.**

Exemption, §63-3622RR.

Responsibility for taxes, §63-3627.**Retailers.**

Advertising, holding out or stating
tax will be assumed or absorbed
by retailer, §63-3619.

SALES TAX —Cont'd**Retailers —Cont'd****Collection.**

Duty of retailer to collect from consumer, §63-3619.

Defined, §63-3610.

Exemption and resale certificates, §63-3622.

Records.

Required records, §63-3624.

Retailers engaged in business in this state.

Defined, §63-3611.

Tangible personal property sold by certain retailers, §63-3641.

Taxes as state money.

Money collected held for state of Idaho, §63-3623A.

Retail food stores.

Relief from responsibility of retaining invoices of nontax sales, §63-3624.

Returns, §63-3623.

Failure to make return.

Determination of amount due by commission, §63-3629.

False returns.

Limitation period upon assessment and collection not applicable, §63-3633.

Ronald McDonald house.

Exemption of renting of place to sleep, §63-3622O.

Rules and regulations.**Tax commission.**

Commission to prescribe extent to which ruling or regulation to be applied without retroactive effect, §63-3624.

Sales.

Defined, §63-3612.

Retail sales.

Defined, §63-3609.

Sale at retail.

Defined, §63-3609.

Type of sales tax applicable to, §63-3619.

Sales price.

Defined, §63-3613.

School lunch program.

Exemptions, §63-3622J.

Security for tax, §63-3625.**Sellers.**

Defined, §63-3614.

Permits, §§63-3620, 63-3620A.

Records.

Required records, §63-3624.

Returns, §63-3623.

SALES TAX —Cont'd**Semiconductors.****Clean rooms.**

Exemptions, §63-3622NN.

Senior citizen centers.

Exemption of sales to and purchases by, §63-3622O.

Skiing.**Exemptions.**

Aerial passenger tramways and snowgrooming and snowmaking equipment, §63-3622Y.

Small employer incentive act.

Incentives and recapture of deficiencies, §63-4408.

Snowgrooming and snowmaking equipment.

Exemption, §63-3622Y.

Soup kitchens.

Exemption of nonprofit organizations, §63-3622O.

Use tax, §63-3621.

State, state agencies and political subdivision.

Exemption of sales to and purchases by, §63-3622O.

State of Idaho.**Use tax.**

Exemptions, §63-3621.

Storage.

Defined, §63-3615.

Imposition for storage, §63-3621.

Successors' liability, §63-3628.**Tax commission.**

Deficiency determinations, §63-3629.

Enforcement of act, §63-3624.

Jeopardy determinations, §63-3630.

Regulations.

Separate display of tax and list price, §63-3619.

Security for tax.

Authority to require, §63-3625.

Use tax.

Administration of use tax, §63-3624.

Taxes as state money, §63-3623A.**Taxpayers.**

Defined, §63-3618.

Jeopardy determinations for taxpayers about to depart from state or about to remove property from state, §63-3630.

Television.

Broadcasting equipment exempt, §63-3622S.

In this state.

Defined, §63-3604.

SALES TAX —Cont'd**Time.**

Credits and refunds.

Time limit on claiming, §63-3626.

When taxes due and payable,
§63-3623.**Title of act,** §63-3601.**Trailers.**

Exemptions.

Utility trailers, §63-3622R.

Trees and timber.

Heating materials.

Wood exempted from taxes

—imposed by chapter,

§63-3622G.

United States.Contractors purchasing tangible
personal property for resale to
United States.Applicability of tax imposed,
§63-3619.**Use.**

Defined, §63-3615.

Use tax.

Administration of use tax, §63-3625.

Exemptions, §63-3621.

Exemption and resale certificates,
§63-3622.

Tangible personal property.

Imposition and rate, §63-3621.

Transient equipment, §63-3621A.

Vending machines.

Exempted sales, §63-3622L.

Vessels.

Exemptions, §63-3622R.

SANITARIUMS.**Funds.**State asylum and sanitarium fund
for patients, §§66-501 to 66-503.**Hospitalization of mentally ill,**

§§66-317 to 66-355.

State asylum and sanitarium fund**for patients,** §§66-501 to 66-503.**State hospitals,** §§66-114 to 66-119.**SCHOOLS.****Idaho state school and hospital.**State hospitals generally, §§66-114 to
66-119.**SEALS AND SEALED****INSTRUMENTS.****Taxation.**

State tax commission, §63-101.

SEARCHES AND SEIZURES.**Cigarette and tobacco products
taxes.**Authority of state tax commission,
§63-2514.**SEARCHES AND SEIZURES****—Cont'd****Cigarette and tobacco products****taxes —Cont'd**

Contraband articles.

Seizure by state tax commission,
§63-2513.Return of property confiscated,
§63-2515.

Unlawful seizures.

State tax commission made party
defendant, §63-2516.**Income tax.**

Property seized for nonpayment.

Successive seizures, §63-3061.

Seizures in collection of deficiencies.

Certain seizures or sales
considered legal, §63-3074.**Property taxes.**

Refusal to pay property tax.

Seizure of property, §63-1101.

SECURED TRANSACTIONS.**Property taxes.**

Exempt property.

Certain secured dues and credits,
§63-602M.**SECURITY MEDICAL PROGRAM,**

§§66-1301 to 66-1318.

See **MENTALLY ILL.****SEEDS.****Property taxes.**Exemption of certain seeds shipped
out of state, §63-602S.**SEMICONDUCTORS.****Sales tax.**

Clean rooms.

Exemptions, §63-3622NN.

SERVICEMEN MEMORIALS,

§§65-101 to 65-106.

SERVICE OF PROCESS.**Property taxes.**

Distraint.

Warrant of distraint, §63-1013.

SHERIFFS.**Income tax.**

Distraint.

Production of books, §63-3062.

Levy or distraint warrant, §63-3059.

Proceedings on levy or distraint,
§63-3060.**SIGNATURES.****Declarations for mental health
treatment,** §66-604.**Mental health treatment.**

Declarations for, §66-604.

SKIING.**Sales tax.**

Exemptions.

Aerial passenger tramways and snowgrooming and snowmaking equipment, §63-3622Y.

SMALL EMPLOYER INCENTIVE

ACT, §§63-4401 to 63-4409.

Administration of provisions, §63-4409.**Applicability of provisions,** §63-4401.**Definitions,** §63-4402.**Income tax credits.**

Capital investments, §63-4403.

Limitations, rules and regulations, §63-4406.

New jobs, §63-4405.

Real property improvements, §63-4404.

Recapture of deficiencies, §63-4407.

Recapture of deficiencies, §63-4407.

Sales and use tax incentives, §63-4408.

Sales and use tax incentives, §63-4408.**Short title,** §63-4401.**SOCIAL SECURITY NUMBERS.****Illegal drug stamp tax.**

Confidentiality of information, §63-4206.

Income tax.

Commission decisions.

Redaction of SSN, §63-3045B.

Veterans.

Discharge papers, recording of, §65-301.

SOLDIERS AND SAILORS.**Memorials.**

Servicemen's memorials, §§65-101 to 65-106.

SOUP KITCHENS.**Sales tax.**

Exemption of nonprofit organizations, §63-3622O.

Use tax, §63-3621.

SOVEREIGN IMMUNITY.**Income tax actions,** §63-3074.**SPECIAL DISTRICT**

DISSOLUTION ACT, §§63-4101 to 63-4106.

Citation of chapter, §63-4101.**Definitions,** §63-4102.**Election,** §63-4103.**SPECIAL DISTRICT****DISSOLUTION ACT —Cont'd****Funds.**

Disposition upon dissolution, §63-4105.

Hearing, §63-4103.**Indebtedness.**

Payment upon dissolution, §63-4106.

Nonfunctioning district, §63-4104.

Petitions, §63-4104.

Petitions.

Filing, §63-4103.

Nonfunctioning district, §63-4104.

Number of signatures required, §63-4103.

Property.

Disposition upon dissolution, §63-4105.

Short title of chapter, §63-4101.**Taxation.**

Special levy for payment of indebtedness, §63-4106.

SPORT SHOOTING RANGES.**Sales tax.**

Exemptions.

Hunting and shooting sports, §63-3622SS.

STAMPS.**Drugs.**

Illegal drug stamp tax, §§63-4201 to 63-4211.

STATE ASYLUM AND**SANITARIUM FUND FOR**

PATIENTS, §§66-501 to 66-503.

STATE DEPARTMENTS AND**AGENCIES.****Taxation.**

Department of revenue and taxation, §§63-101 to 63-119.

See TAXATION.

Veterans.

Basic preference in initial appointment, §65-504.

Competitive examinations.

Addition of points, §65-504.

Failing or refusing to give preference in hiring, §65-506.

Officials to observe preference in hiring, §65-505.

STATE EMPLOYEES.**Public officers and employees generally.**

See PUBLIC OFFICERS AND EMPLOYEES.

STATE HOSPITALS.

Funds.

State asylum and sanitarium fund
for patients, §§66-501 to 66-503.

See **MENTALLY ILL.**

General provisions, §§66-114 to
66-119.

See **MENTALLY ILL.**

STATE LANDS.

Property taxes.

Abstract of state lands, §63-211.

Equity in state property, §63-309.

Exemption of government property,
§63-602A.

Exemption of possessory rights to
public lands, §63-602F.

STATE OF IDAHO.

Hospitals.

State hospitals, §§66-114 to 66-119.

See **MENTALLY ILL.**

Income tax.

Actions against state.

State tax commission made party
defendant, §63-3074.

Mentally ill.

State hospitals, §§66-114 to 66-119.

See **MENTALLY ILL.**

Sales tax.

Use tax.

Exemptions, §63-3621.

Use tax.

Exemptions, §63-3621.

Veterans.

Failure or refusal to give preference
in hiring, §65-506.

Officials to observe preference in
hiring, §65-505.

Public employers.

Preference given veterans, spouses,
widows and widowers, §65-503.

STATES.

Income tax.

Credit for taxes paid another state or
territory, §63-3029.

Taxation.

Collection of taxes.

Suits by attorney general in courts
of other states, §63-3408.

STATE TREASURER.

Income tax.

Deposits of revenue received,
§63-3067.

Property taxes.

Transmission of funds to state
treasurer, §63-1307.

**STATE TREASURER —Cont'd
Taxation.**

Tax anticipation notes.

Procedure for issuance, §63-3202.

STATUTE OF LIMITATIONS.

Fuels tax.

Claims for refunds, §63-2410.

Payment of special fuels tax
directly to vendor, §63-2423.

Illegal drug stamp tax.

Criminal prosecutions, §63-4207.

Income tax.

Action to enforce lien, §63-3056.

Credits or refunds of taxes for
overpayment, §63-3072.

Destruction of old returns, §63-3071.

Issuance of notice of deficiency and
collection of tax, §63-3068.

Special statute of limitations,
§63-3069A.

Property taxes.

Appeal of assessments, §63-501A.

Payment under protest.

Action for recovery, §63-1308.

Recovery of improperly claimed
exemptions.

Homestead exemption, §63-602G.

Tax relief.

Erroneous claims.

Recovery, §63-708.

Sales tax.

Assessment and collection, §63-3633.

Taxation.

Sales tax.

Assessment and collection,
§63-3633.

STOCK AND STOCKHOLDERS.

Property taxes.

Exemption of capital stock, §63-602L.

SUBPOENAS.

Income tax.

Failure to comply with subpoena.

Contempt, §63-3043.

Taxation.

Board of tax appeals.

Authority to issue subpoenas,
§63-3808.

SUMMONS AND PROCESS.

Taxation.

State tax commission.

Process and procedure before,
§63-107.

SUPREME COURT OF IDAHO.

Income tax.

Appeals.

Judgments of district court appeal
to supreme court, §63-3049.

SURVIVING SPOUSES.**Income tax.**

Imposition of tax, §63-3024.

Returns, §63-3031.

Property taxes.

Tax relief.

Filing of claim by spouse of deceased claimant, §63-702.

SYRINGES.

Sales tax exemption, §63-3622N.

T**TAXATION.****Accounts and accounting.**

Multistate tax compact, §63-3709.

Actions.

Collection of taxes.

Suits by attorney general on behalf of other states, §63-3409.

Alternative dispute resolution.

Arbitration on mediation of tax issues under tax commission's jurisdiction, §63-118.

Anticipation of revenue by state,

§§63-3201 to 63-3204.

Authority to borrow money in anticipation of income or revenue, §63-3201.

Expenses of negotiating loan and issuing notes, §63-3204.

Limit on borrowing of money in anticipation of revenue, §63-3201.

Tax anticipation notes.

Issuance, §63-3201.

Expenses of negotiating loan and issuing notes, §63-3204.

Procedure for issuance, §63-3202.

Redemption fund, §63-3203.

Anticipation of revenue by taxing districts, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

Appeals.

Board of tax appeals, §§63-101, 63-3801 to 63-3814.

Cigarette and tobacco products taxes.

Claims for refund, §63-2565.

Income tax.

Payment of tax or deficiency required, §63-3049.

Redetermination by commission.

Review in district court, §63-3049.

TAXATION —Cont'd**Appeals —Cont'd**

Sales tax.

Refunds.

Appeal of tax commission decision denying claim, §63-3626.

Arbitration of tax issues under tax commission's jurisdiction.

Alternative dispute resolution, §63-118.

Attorney general.

Collection of taxes.

Suits to collect taxes, §63-3408.

Multistate tax commission.

Nonvoting member, §63-3705.

Other states.

Suits by attorney general on behalf of other states for collection of taxes, §63-3409.

Audits and auditors.

Multistate tax compact.

Interstate audits, §63-3701.

Bill of rights, taxpayers, §§63-4001 to 63-4011.

See TAXPAYERS' BILL OF RIGHTS.

Board of tax appeals, §§63-101, 63-3801 to 63-3814.

Administrative procedure.

Proceedings to conform with administrative procedure act, §63-3814.

Appeals.

Appeals from decisions of board of tax appeals, §63-3812.

Determination of tax liability, §63-3811.

Payment of taxes while on appeal, §63-3812.

When decision of board conclusive, §63-3813.

Clerk.

Appointment, §63-3806.

Compensation of members, §63-3804.

Composition, §63-3802.

Conflicts of interest, §63-3802.

Department of revenue and taxation.

Board established within department, §63-3801.

Department composed of state tax commission and board of tax appeals, §63-101.

Election of chairman, §63-3803.

Employees.

Appointment, §63-3806.

TAXATION —Cont'd**Board of tax appeals —Cont'd**

Established, §63-3801.

Governor.

Removal of members, §63-3805.

Hearings.

Assignment by chairman,
§63-3809.

Call for hearings, §63-3807.

Entire board to rehear, §63-3810.

Final decisions, §63-3809.

Matters considered by board to be
of public importance, §63-3809.

Motions for rehearing, §63-3810.

Recommended decision, §63-3809.

Meetings, §63-3807.

Members, §63-3802.

Removal of members, §63-3805.

Motion for rehearing, §63-3810.

Office, §63-3807.

Orders.

When decisions of board
conclusive, §63-3813.

Procedure for appeal, §63-3811.

Qualifications of members, §63-3802.

Quorum, §63-3807.

Refund or credit of property taxes.

Order of board of tax appeals,
§63-1305.

Removal of members, §63-3805.

Rules and regulations.

Adoption, §63-3808.

Salaries.

Compensation of members,
§63-3804.

State tax commission.

Board not subject to supervision or
control, §63-3801.

Subpoenas.

Authority to issue, §63-3808.

Terms, §63-3803.

Witnesses.

Fees and mileage, §63-3808.

Capital gains.

Corporations.

Computing taxable income,
§§63-3027, 63-3027A.

Sale of residence.

Computation of gross, §63-3030.

Charge cards.

Payment by, §63-117.

**Cigarette and tobacco products
taxes, §§63-2501 to 63-2565.**See CIGARETTE AND TOBACCO
PRODUCTS TAXES.**Collection.**

Attorney general.

Suits to collect taxes, §63-3408.

TAXATION —Cont'd**Collection —Cont'd**

Secretary of state.

Certificate of secretary that officers
have authority to collect tax,
§63-3408.

States.

Attorney general.

Suits by attorney general on
behalf of other states,
§63-3409.Suits by attorney general on behalf
of other states, §63-3409.Taxpayers' bill of rights, §§63-4001 to
63-4011.**Controlled substances.**Illegal drug stamp tax, §§63-4201 to
63-4211.

See ILLEGAL DRUG STAMP TAX.

Cooperative electrical associations.Taxation on gross earnings,
§§63-3501 to 63-3506.See COOPERATIVE ELECTRICAL
ASSOCIATIONS.**Cooperative natural gas
associations.**Taxation on gross earnings,
§§63-3501 to 63-3506.See COOPERATIVE NATURAL
GAS ASSOCIATIONS.**Corporate headquarters incentive
act, §§63-2901 to 63-2910.****Corporations.**

Capital gains.

Computing taxable income,
§§63-3027, 63-3027A.**County sales tax, §§63-2601 to
63-2605.****Credit cards.**

Payment by, §63-117.

Debit cards.

Payment by, §63-117.

Deferral.Property tax deferral, §§63-712 to
63-721.**Definitions.**

Illegal drug stamp tax, §63-4202.

Multistate tax compact, §63-3701.

Property taxes.

See PROPERTY TAXES.

**Department of revenue and
taxation.**

Composition, §63-101.

Creation, §63-101.

Disasters.

State tax commission.

Filing and payment extensions as
disaster relief, §63-114.

Property taxes, §63-220.

TAXATION —Cont'd**Districts.**

Taxing districts.

Anticipation of revenue, §§63-3101 to 63-3108.

See TAXING DISTRICTS.

Drugs.

Illegal drug stamp tax, §§63-4201 to 63-4211.

See ILLEGAL DRUG STAMP TAX.

Earnings.

Cooperative electrical associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE
ELECTRICAL
ASSOCIATIONS.

Cooperative natural gas associations.

Tax on gross earnings, §§63-3501 to 63-3506.

See COOPERATIVE NATURAL
GAS ASSOCIATIONS.

Electric power.

Cooperative electrical associations.

Tax on gross earnings, §§63-3501 to 63-3506.

License tax on electricity, §§63-2701 to 63-2711.

Electronic funds transfer, §63-115.**Exemptions from taxation.**

Post consumer waste.

Qualified equipment utilizing.

Property taxes, §63-602CC.

Forests and forestry.

Tax on forest lands and forest products, §§63-1701 to 63-1708.

Fuels tax, §§63-2401 to 63-2444.**Funds.**

Tax anticipation note redemption fund, §63-3203.

Governor.

Board of tax appeals.

Removal of members, §63-3805.

Multistate tax commission.

Appointment of members,
§63-3703.

Gross earnings.

Cooperative electrical associations.

Tax on gross earnings, §§63-3501 to 63-3506.

Cooperative natural gas associations.

Tax on gross earnings, §§63-3501 to 63-3506.

Hearings.

Board of tax appeals, §§63-3807 to 63-3810.

Prepaid taxes.

Hearing by board of county commissioners, §63-1603.

TAXATION —Cont'd**Idaho corporate headquarters**

incentive act, §§63-2901 to 63-2910.

Idaho small employer incentive

act, §§63-4401 to 63-4409.

Illegal drug stamp tax, §§63-4201 to

63-4211.

See ILLEGAL DRUG STAMP TAX.

Income tax.

General provisions, §§63-3001 to 63-3088.

Industrial commission.

Exchange of information with state tax commission, §63-3077B.

Interstate compacts.

Multistate tax compact, §§63-3701 to 63-3709.

Kilowatt-hour tax.

License tax on electricity, §§63-2701 to 63-2711.

Libraries.

Income tax.

Tax credits for donations to public libraries, §63-3029A.

Property taxes.

Exemption of public libraries,
§63-602F.

License taxes, §§63-2301 to 63-2309.**Lotteries.**

Income tax.

State withholding tax on lottery winnings, §63-3035A.

Mediation.

Alternative dispute resolution of tax issues under tax commission's jurisdiction, §63-118.

Memorials.

Servicemen's memorials.

Special tax for construction,
§65-104.

Special tax for upkeep, §65-103.

Mines and mining.

Tax on profits of mines, §§63-2801 to 63-2811.

See MINES AND MINING.

Misdemeanors.

Cigarette and tobacco products taxes.

Violations of provisions, §63-2512.

Fuels tax.

Doing business without license,
§63-2433.

Special fuels permits, §63-2441.

Violations of provisions, §63-2443.

Sales tax.

Absorption or assumption of tax by retailer, §63-3619.

TAXATION —Cont'd

- Motor fuels tax**, §§63-2401 to 63-2444.
See FUELS TAX.
- Motor vehicles.**
 - Exemption from taxation.
 - Occasional sales.
Exempt from sales tax, §63-3622K.
- Multistate tax compact**, §§63-3701 to 63-3709.
 - Account.
 - Created, §63-3709.
 - Advisory committee.
 - Composition, §63-3706.
 - Established, §63-3706.
 - Meetings, §63-3706.
 - Purpose, §63-3706.
 - Arbitration, §63-3701.
 - Attorney general.
 - Nonvoting member of commission, §63-3705.
 - Audits.
 - Interstate audit participation, §63-3707.
 - Limitation on interstate audits, §63-3707.
 - Commission, §63-3701.
 - Alternate members, §63-3704.
 - Appointment to commission, §63-3703.
 - Attorney general, §63-3705.
 - Designation of alternate, §63-3704.
 - Compact enacted, §63-3701.
 - Construction and severability, §63-3701.
 - Definitions, §63-3701.
 - Division of income, §63-3701.
 - Effect on other laws and jurisdiction, §63-3701.
 - Elements of income tax laws, §63-3701.
 - Elements of sales and use tax laws, §63-3701.
 - Entry into force and withdrawal, §63-3701.
 - Governor.
 - Appointment of members to commission, §63-3703.
 - Interstate audits, §63-3701.
 - Purpose, §63-3701.
 - Reports.
 - Optional reporting for sales, §63-3702.
 - Sales.
 - Optional reporting, §63-3702.
 - Sharing of tax information, §63-3708.

TAXATION —Cont'd

- Multistate tax compact —Cont'd**
 - State tax commission.
 - Sharing of tax information with multistate tax commission, §63-3708.
 - Uniform regulations and forms, §63-3701.
- Natural gas.**
 - Cooperative natural gas associations.
 - Tax on gross earnings, §§63-3501 to 63-3506.
 - See COOPERATIVE NATURAL GAS ASSOCIATIONS.
- Oaths.**
 - Department of revenue and taxation.
 - Members of state tax commission, §63-101.
- Orders.**
 - Prepaid taxes.
 - Board of county commissioners, §63-1603.
- Payment.**
 - Installments.
 - Taxpayers' bill of rights, §63-4009.
 - Multiple payments.
 - Taxpayers' bill of rights, §63-4007.
 - Prepayment, §§63-1601 to 63-1608.
- Penalties.**
 - Cigarette and tobacco products taxes.
 - Distribution of money collected, §§63-2520, 63-2564.
 - See CIGARETTE AND TOBACCO PRODUCTS TAXES.
 - Default of assessor or tax collector, §63-1402.
- Petitions.**
 - Prepayment of taxes.
 - Order granting petition, §63-1603.
 - Petition for permission to prepay taxes, §63-1602.
- Prepayment of taxes**, §§63-1601 to 63-1608.
 - Allowances as credit for prepaid taxes.
 - Lapse of unused credit, §63-1608.
 - Board of county commissioners.
 - Hearings, §63-1603.
 - Orders, §63-1603.
 - Credit for prepaid taxes, §63-1607.
 - Lapse of unused credit, §63-1608.
 - Declaration of intent, §63-1601.
 - Hearings.
 - Board hearings, §63-1603.
 - Legislative intent, §63-1601.
 - Local impact committee, §63-1604.
 - Agreements for prepaid taxes, §63-1606.

TAXATION —Cont'd**Prepayment of taxes —Cont'd**

Local impact committee —Cont'd

Appointment of members,
§63-1604.

Composition, §63-1604.

Permission to prepay taxes.

Petitions, §63-1602.

Petitions.

Order granting petition, §63-1603.

Permission to prepay taxes,
§63-1602.Prepayment optional and voluntary,
§63-1606.**Public works contractors**, §§63-1501
to 63-1505.See PUBLIC WORKS
CONTRACTORS.**Records.**

Cigarette and tobacco products taxes.

Required, §§63-2511, 63-2555.

Shipments and deliveries from
public warehouse of first
destination, §63-2558.

Fuels tax.

Required records, §63-2429.

Special fuels dealers, §63-2429.

Income tax.

Examination of records to
determine correctness of
return, §63-3042.

Sales tax.

Required records, §63-3624.

Refunds.

Fuels tax.

Aircraft engine fuel.

Gasoline other than aircraft
engine fuel, §63-2408.Duplicate taxes assessed outside of
state, §63-2410.

Gasoline, §63-2410.

Payment of special fuels tax
directly to vendor, §63-2423.**Reports.**

Fuels tax.

Distributors, §63-2406.

Importations by carriers, §63-2436.

Instate pipeline terminal and
storage report, §63-2437.**Returns.**Electronic returns and documents,
§63-115.

Property taxes, §63-115.

Reporting whole dollar amounts,
§63-113.

Sales tax, §63-3623.

Failure to make return.

Determination of amount due by
commission, §63-3629.**TAXATION —Cont'd****Returns —Cont'd**

Sales tax —Cont'd

False returns.

Limitation period upon
assessment and collection
not applicable, §63-3633.**Rounding off.**Reporting whole dollar amounts,
§63-113.**Rules and regulations.**

Board of tax appeals.

Adoption of rules, §63-3808.

Fuels tax.

State tax commission, §63-2427.

Income tax.

State tax commission, §63-3039.

Sales tax.

Retroactivity, §63-3624.

Sales.County sales tax, §§63-2601 to
63-2605.General provisions, §§63-3601 to
63-3638A.

See SALES TAX.

Seals and sealed instruments.

State tax commission, §63-101.

Small employer incentive act,
§§63-4401 to 63-4409.**States.**

Collection of taxes.

Suits by attorney general in courts
of other states, §63-3408.Suits by attorney general on behalf
of other states, §63-3409.**State treasurer.**

Tax anticipation notes.

Procedure for issuance, §63-3202.

Subpoenas.

Board of tax appeals.

Authority to issue subpoenas,
§63-3808.**Summons and process.**

State tax commission.

Process and procedure before,
§63-107.**Tax collectors.**

License taxes.

General provisions, §§63-2301 to
63-2309.**Tax commission**, §63-101.Alternative dispute resolution,
§63-118.

Arbitration.

Alternative dispute resolution,
§63-118.

Assessment of property.

Adjustment of assessed value,
§63-316.

TAXATION —Cont'd**Tax commission —Cont'd**

- Assessment of property —Cont'd
 - Changes in assessment.
 - Certificate by chairman, §63-111.
 - Completion of assessment program by commission, §63-316.
 - Equalization of assessments, §§63-109, 63-110.
 - Market value.
 - Rules pertaining to, §63-208.
 - Operating property, §§63-207, 63-401.
 - Appeals from commission valuations, §63-409.
 - Arbitrary assessment, §63-404.
 - Procedure, §63-405.
 - Reexamination of value on complaint on assessor, §63-408.
 - Payments for assistance with, §63-112.
- Board of tax appeals.
 - Board not subject to supervision or control of tax commission, §63-3801.
- Chairman, §63-102.
 - Certificate.
 - Changes in assessment, §63-111.
- Collection agency, use of, §63-119.
- Collection communications.
 - Taxpayers' bill of rights, §63-4003.
- Compensation of members, §63-102.
- Cooperative electrical associations.
 - Gross earnings tax.
 - Allotment and apportionment of tax by state tax commission, §63-3503.
 - Gross wind energy earnings, §63-3503B.
- Corporate headquarters incentive act.
 - Administration of provisions, §63-2910.
- Disaster relief.
 - Filing and payment extensions as.
 - Property taxes, §§63-114, 63-220.
- Duties, §63-105.
 - Property tax, §63-105A.
- Electronic returns and documents.
 - Filing.
 - Property taxes, §63-115.
- Employees, §63-102.
- Equalization of assessments, §§63-109, 63-110.
 - See PROPERTY TAXES.
- Federal aid.
 - Authority as to, §63-106.

TAXATION —Cont'd**Tax commission —Cont'd**

- Hearings, §63-102.
- Industrial commission, exchange of information, §63-3077B.
- Location information.
 - Taxpayers' bill of rights, §63-4002.
- Mediation.
 - Alternative dispute resolution, §63-118.
- Meetings, §63-108.
- Other offices.
 - Holding other offices, §63-104.
- Powers and duties, §63-105.
 - Property tax, §63-105A.
- Process and procedure before, §63-107.
- Property tax relief.
 - Recovery of erroneous claims, §63-708.
- Reimbursement by state tax commission, §63-709.
 - Procedure after reimbursement, §63-710.
- Quorum, §63-102.
- Quota prohibition.
 - Taxpayers' bill of rights, §63-4010.
- Resort county local options sales or use tax.
 - Compliance of public officers, §63-1404.
- Secretary, §63-103.
- Small employer incentive act.
 - Administration of provisions, §63-4409.
- State board of equalization.
 - Commission to serve as, §63-105A.
- Travel expenses, §63-103.
- Unauthorized property tax levy.
 - Notification by state tax commission, §63-809.
- Uniform property rolls and related documents, §63-219.

Taxing districts.

- Anticipation of revenue, §§63-3101 to 63-3108.
 - See TAXING DISTRICTS.

Tax relief.

- Property tax relief, §§63-701 to 63-711.
 - See PROPERTY TAXES.

Tobacco.

- Cigarette and tobacco products taxes, §§63-2501 to 63-2565.
 - See CIGARETTE AND TOBACCO PRODUCTS TAXES.

TAXATION —Cont'd**Trees and timber.**

Taxation of forest lands and forest products, §§63-1701 to 63-1708.
See FORESTS AND FORESTRY.

Whole dollar amounts.

Rounding off, §63-113.

TAXING DISTRICTS.**Anticipation of revenue, §§63-3101 to 63-3108.**

Authority to borrow money in anticipation of tax levy or collection and issue notes or bonds thereof, §63-3102.

Construction of act, §63-3107.

Necessary actions authorized, §63-3108.

Revenue anticipation bonds.

Authority to issue, §63-3102.

Creation of fund to pay bonds or notes at maturity, §63-3104.

Levy to cover deficiencies in payment, §63-3105.

Necessary actions authorized, §63-3108.

Payment, §63-3104.

Refunding bonds or notes.

Issuance and sale to pay for revenue anticipation bonds or notes, §63-3106.

Sale, §63-3103.

Tax levy to cover deficiency in bond or note payments, §63-3105.

Taxing district.

Defined, §63-3101.

Bond issues.

Revenue anticipation bonds.

Authority to issue, §63-3102.

Creation of fund to pay bonds at maturity, §63-3104.

Levy to cover deficiencies in payment, §63-3105.

Necessary actions authorized, §63-3108.

Payment, §63-3104.

Refunding bonds or notes.

Issuance and sale to pay for revenue anticipation bonds or notes, §63-3106.

Sale, §63-3103.

Tax levy to cover deficiency in bond or note payments, §63-3105.

Construction and interpretation.

Anticipation of revenue.

Construction of act, §63-3107.

Definitions, §63-3101.**Elections.**

Creation of new taxing district.

Notice of election, §63-802C.

TAXPAYERS' BILL OF RIGHTS,

§§63-4001 to 63-4011.

Abuse, §63-4004.**Collection communications, §63-4003.****Definitions, §63-4001.****False representations, §63-4005.****Harassment, §63-4004.****Installment payments, §63-4009.****Interviews.**

Recording, §63-4008.

Location information.

Acquisition, §63-4002.

Defined, §63-4001.

Misleading representations, §63-4005.**Multiple tax obligations, §63-4007.****Quota prohibition, §63-4010.****Revenue officer liability, §63-4011.****Unfair practices, §63-4006.****TECHNOLOGICAL EQUIPMENT.****Income tax.**

Deductions, §63-3022J.

TELECOMMUNICATIONS.**Income tax.**

Broadband equipment.

Credit for investment in, §63-3029I.

TELEPHONES.**Harassment by telephone.**

Collection of taxes, §63-4004.

Property taxes.

Assessment of operating property of telephone corporations, §63-405.

Exempt property.

Certain cooperative telephone lines, §63-602Q.

TELEVISION.**Sales tax.**

Broadcasting equipment exempt, §63-3622S.

Media production project tax rebate, §63-3622TT.

TIME.**Income tax.**

Date tax due and payable, §63-3085.

Returns.

Extension of time for filing, §63-3033.

Filing of returns, §63-3032.

Property taxes.

When taxes payable, §63-903.

Sales tax.

Credits and refunds.

Time limit on claiming, §63-3626.

TIME —Cont'd**Sales tax —Cont'd**

When taxes due and payable,
§63-3623.

TOBACCO.**Cigarette and tobacco products taxes, §§63-2501 to 63-2565.**

See CIGARETTE AND TOBACCO
PRODUCTS TAXES.

TRADEMARKS.**Property taxes.**

Exemption of intangible personal
property, §63-602L.

TRADE SECRETS.**Property taxes.**

Exemption of intangible personal
property, §63-602L.

TRANSPORTATION.**Mentally ill.**

Hospitalization of mentally ill.
Involuntary commitment, §66-330.

Security medical program.

Expenses and responsibility for
transportation of patients,
§66-1308.

Transportation of patients,
§66-1308.

TREES AND TIMBER.**Sales tax.**

Heating materials.
Wood exempted from taxes
imposed by chapter,
§63-3622G.

Taxation.

Exemptions from taxation.
Heating materials.
Wood exempted from taxes
imposed by chapter,
§63-3622G.
Tax on forest lands and forest
products, §§63-1701 to 63-1708.
See FORESTS AND FORESTRY.

TRIAL.**Mentally ill.**

Security medical program.
Determination of mental
competency to stand trial,
§66-1304.
Pretrial or presentence procedure.
Psychological diagnosis and
recommendations, §66-1304.

TRUSTS AND TRUSTEES.**Fuels tax.**

Taxes are state money and held in
trust for state of Idaho,
§63-2435.

**TRUSTS AND TRUSTEES —Cont'd
Funds.**

State asylum and sanitarium fund
for patients, §§66-501 to 66-503.
See MENTALLY ILL.

Income tax.

Computing tax of part-year or
nonresident trusts, §63-3026A.

Nonresident individuals who are
beneficiaries of trust or estate,
§63-3026A.

Election as to taxable income,
§63-3022L.

Rate of tax, §63-3024.

Returns.

Trusts required to make returns of
income, §63-3030.

Tax imposed on trusts, §63-3024.

Trust accounts.

Designation of deposits in trust
account, §§63-3067A to
63-3067C.

Mentally ill.

State asylum and sanitarium fund
for patients, §§66-501 to 66-503.
See MENTALLY ILL.

TUBERCULOSIS.**Charitable institutions
commission.**

Idaho tuberculosis hospital.
Powers and duties of commission
transferred to board of health
and welfare, §66-1007.

Funds.

Idaho tuberculosis hospital.
Acceptance of funds authorized,
§66-1002.

Gifts.

Idaho tuberculosis hospital.
Donation of property belonging to
Gooding College of Methodist
Episcopal Church, §66-1001.

Gooding College.

Donation of property for Idaho
tuberculosis hospital, §66-1001.

**Hospitalization of tuberculosis
patients.**

Idaho tuberculosis hospital.
Delegation of responsibility,
§66-1004.

Hospitals.

Idaho tuberculosis hospital,
§§66-1001 to 66-1007.

Idaho tuberculosis hospital,

§§66-1001 to 66-1007.
Acceptance of funds authorized,
§66-1002.

TUBERCULOSIS —Cont'd**Idaho tuberculosis hospital —Cont'd**

Board of health and welfare.

Powers and duties of charitable institutions commission transferred to board of health and welfare, §66-1007.

Charitable institutions commission.

Powers and duties of commission transferred to board of health and welfare, §66-1007.

Delegation of responsibility for hospitalization of patients, §66-1004.

Department of public health.

Powers and duties of charitable institutions commission transferred to board of health and welfare, §66-1007.

Equipment, §66-1003.

Establishment, §66-1001.

Funds.

Acceptance of funds authorized, §66-1002.

Gifts.

Donation of property belonging to Gooding College of Methodist Episcopal Church, §66-1001.

Hospitalization of tuberculosis patients.

Delegation of responsibility, §66-1004.

Provision for transfer of power, §66-1005.

Provisions severable, §66-1006.

Remodeling of hospital, §66-1003.

Separability, §66-1006.

Transfer of power.

From charitable institutions commission to board of health and welfare, §66-1007.

Provision for transfer of power, §66-1005.

U**UNFAIR TRADE PRACTICES.**

Tax collection, §63-4006.

UNIFORM LAWS.

Division of income for tax purposes act.

Multistate tax compact, §§63-3701 to 63-3709.

See **TAXATION**.

UNITED STATES.**Income tax.**

Agreements for collection of tax, §63-3077D.

UNITED STATES —Cont'd**Income tax —Cont'd**

Department of energy.

Franchise tax, §63-3025A.

Information furnished to certain officials, §63-3077.

Retirement annuities.

Deduction, §63-3022A.

Mentally ill.

Hospitalization of mentally ill.

Involuntary commitment.

Care and treatment in federal facility, §66-331.

Property taxes.

Exemption of government property, §63-602A.

Sales tax.

Contractors purchasing tangible personal property for resale to United States.

Applicability of tax imposed, §63-3619.

Veterans.

Performance of services without fee.

Parties authorized to request services, §65-302.

UNIVERSITIES AND COLLEGES.**Gooding College.**

Donation of property for Idaho tuberculosis hospital, §66-1001.

UNSOUND MIND.**Hospitalization of mentally ill,**

§§66-317 to 66-355.

See **MENTALLY ILL**.

Interstate compact on mental health, §§66-1201 to 66-1205.

See **MENTALLY ILL**.

Mentally ill.

General provisions.

See **MENTALLY ILL**.

Hospitalization of mentally ill,

§§66-317 to 66-355.

See **MENTALLY ILL**.

State hospitals.

General provisions, §§66-114 to 66-119.

See **MENTALLY ILL**.

USE TAX.

Administration, §63-3625.

Corporate headquarters incentive act.

Sales and use tax rebates, §63-2908.

Exemptions.

Exemption and resale certificates, §63-3622.

Sales tax generally, §§63-3601 to 63-3638A.

See **SALES TAX**.

USE TAX —Cont'd**Small employer incentive act.**

Incentives and recapture of deficiencies, §63-4408.

Tangible personal property.

Exemption, §63-3621.

Imposition and rate, §63-3621.

Transient equipment, §63-3621A.

Transient equipment.

Tangible personal property, §63-3621A.

V

VENDING MACHINES.**Sales tax.**

Exempt sales.

De minimis sales, §63-3622L.

VENUE.**Drug stamp tax.**

Exemption claims, §63-4211.

Illegal drug stamp tax.

Exemption claims, §63-4211.

Mentally ill.

Hospitalization of mentally ill.

Involuntary commitment.

Hearings, §66-329.

VESSELS.**Property taxes.**

Exemption of vessels properly registered, §63-602J.

Sales tax.

Exemptions, §63-3622R.

VETERANS.**Administration.**

Commission to advise administrator of division, §65-204.

Age.

G.I. bill of rights.

Males of or over eighteen years of age empowered to contract under bill of rights, §65-509.

Application of act limited, §65-507.**Birth certificates.**

Furnishing without fee, §65-301.

Board of county commissioners.

Service officers.

Appointment by commissioner, §65-601.

Cemeteries.

Idaho state veterans cemetery, §65-108.

Veterans cemetery maintenance fund, §65-107.

Charges.

Veterans' home, §66-907.

VETERANS —Cont'd**Conflicts with federal laws or regulations.**

Applicability of act, §65-507.

Construction and interpretation.

Veterans affairs commission.

Construction with other laws, §65-207.

Contracts.

Males of or over eighteen years of age empowered to contract under G. I. bill of rights, §65-509.

Copies.

Discharge papers.

Issuance without fee, §65-301.

Counties.

Basic preference in initial appointment, §65-504.

Competitive examinations.

Addition of points, §65-504.

Failing or refusing to give preference in hiring, §65-506.

Officials to observe preference in hiring, §65-505.

Public employers.

Preference given veterans, spouses, widows and widowers, §65-503.

Death.

Death certificates.

Furnishing certified copies without fee, §65-301.

Decedents' estates.

Veterans' home.

Succession of property of deceased resident, §66-906.

Deeds of trust.

Furnishing without fee to veterans, §65-301.

Definitions.

Division of veterans' affairs, §65-203.

Preferences for veterans, §65-502.

Veterans affairs commission, §65-203.

Discharge papers.

Free recording or indexing, §65-301.

Division of veterans services.

Administrators, §65-201.

Powers and duties, §65-202.

Appointment of members, §65-201.

Construction with other laws, §65-207.

Creation, §65-201.

"Veteran" defined, §65-203.

Divorce.

Furnishing divorce certificates without fee, §65-301.

Employers and employees.

Applicability of act limited, §65-507.

VETERANS —Cont'd**Employers and employees —Cont'd**

Failing or refusing to give preference in hiring, §65-506.

Officials to observe preference for veterans, §65-505.

Preference to be given veterans, spouses, widows and widowers by public employers, §65-503.

Relation to other laws, §65-510.

Examinations.

Addition of points to competitive examination ratings, §65-504.

Fees.

Discharge papers.

Recording or indexing without fee, §65-301.

Parties authorized to request services without fee, §65-302.

Performance of services without fee. Violation constitutes misdemeanor, §65-303.

Funds.

Transportation fund, §65-208.

G.I. bill of rights.

Contracts.

Males of or over eighteen years of age empowered to contract, §65-509.

Governor.

Veterans affairs commission.

Power to discontinue commission, §65-201.

Home for veterans, §§66-901 to 66-907.

Idaho veterans' home, §§66-901 to 66-907.

Inspections.

Veterans' home, §66-904.

Liability.

Preference in hiring.

Civil liability for failure or refusal to give preference, §65-506.

Marriage.

Furnishing certified copies of marriage without fee, §65-301.

Misdemeanors.

Demanding, collecting or receiving fees in violation of article, §65-303.

Mortgages.

Furnishing without fee, §65-301.

Municipal corporations.

Addition of points to competitive examination ratings, §65-504.

Basic preference in initial appointment, §65-504.

VETERANS —Cont'd**Municipal corporations —Cont'd**

Failure or refusal to give preference in hiring, §65-506.

Officials to observe preference in hiring, §65-505.

Public employers.

Preference given veterans, spouses, widows and widowers, §65-503.

Notaries public.

Performance without fee, §65-301.

Preferences for veterans.

Definitions, §65-502.

Legislative declaration, §65-501.

Public employers.

Addition of points to competitive examination ratings, §65-504.

Applicability of act limited, §65-507.

Basic preference in initial appointment, §65-504.

Failure or refusal to give preference, §65-506.

Leaves of absence, §65-508.

Officials to observe preference, §65-505.

Preference given veterans, spouses, widows and widowers, §65-502.

Reemployment, §65-508.

Purpose of provisions, §65-501.

Relation to other laws, §65-510.

Severability of provisions, §65-511.

Public officers and employees.

Addition of points to competitive examination ratings, §65-504.

Applicability of act limited, §65-507.

Basic preference in initial appointment, §65-504.

Failure or refusal to give preference in hiring, §65-506.

Officials to observe preference, §65-505.

Preference given veterans, spouses, widows and widowers by public employers, §65-503.

Relation to other laws, §65-510.

Recordation.

Discharge papers.

Free recording or indexing, §65-301.

Removal of certain forms from official records, §65-301.

Rules and regulations.

Adoption, §65-204.

Salaries.

Service officers, §65-602.

Service officers.

Appointment to aid veterans or dependents, §65-601.

VETERANS —Cont'd

Service officers —Cont'd

- Compensation, §65-602.
- Duty to aid veterans or dependents, §65-601.
- Office, §65-602.

State departments and agencies.

- Basic preference in initial appointment, §65-504.
- Competitive examinations.
 - Addition of points, §65-504.
- Failing or refusing to give preference in hiring, §65-506.
- Officials to observe preference in hiring, §65-505.

State of Idaho.

- Failure or refusal to give preference in hiring, §65-506.
- Officials to observe preference in hiring, §65-505.
- Public employers.
 - Preference given veterans, spouses, widows and widowers, §65-503.

**Transportation of
wheelchair-bound veterans,
§65-208.**

United States.

- Performance of services without fee.
- Parties authorized to request services, §65-302.

Veterans affairs commission.

- Appointment of members, §65-201.
- Compensation of members, §65-206.
- Construction with other laws, §65-207.

Creation, §65-201.

Discontinuance.

- Power of governor to discontinue, §65-201.

Property transferred to, §65-201.

Rules and regulations, §65-204.

Terms, §65-201.

Traveling expenses, §65-206.

Vacancies, §65-201.

"Veteran" defined, §65-203.

Veterans cemetery maintenance fund, §65-107.

Veterans home.

- Administrator of division.
 - Management and operation of home, §65-202.
- Admissions to home.
 - Establishment of appropriate admissions criteria, §66-907.
 - Qualifications for admission, §66-901.
- Charges, §66-907.

VETERANS —Cont'd

Veterans home —Cont'd

- Decedents' estates.
 - Succession of property of deceased resident, §66-906.
- Establishment of home, §66-901.
- Honorably discharged veterans, §66-901.
- Inspections, §66-904.
- Succession of property of deceased resident, §66-906.

**VETERANS CEMETERY
MAINTENANCE FUND, §65-107.**

**VETERANS' HOME, §§66-901 to
66-907.**

See VETERANS.

VISITATION RIGHTS.

Mentally ill.

- Hospitalization of mentally ill.
- Exercise of civil rights, §66-346.
- Right to communication and visitation, §66-346.

VITAL STATISTICS.

Birth certificates.

- Veterans.
 - Furnishing without fee, §65-301.

Death certificates.

- Veterans.
 - Furnishing without fee, §65-301.

Veterans.

- Birth certificates.
 - Furnishing without fee, §65-301.

W

WAREHOUSES.

Cigarette and tobacco products taxes.

- Records of shipments and deliveries from public warehouse or first destination, §63-2558.

Property taxes.

- Exempt property.
 - Personal property shipped into state and stored in public or private warehouse structure, and designated for shipment out of state, §63-602U.

WARRANTS.

Income tax.

- Levy or distraint warrants, §63-3059.

**WARRANTS FOR PAYMENT OF
MONEY.**

Property taxes.

- Warrant redemption fund, §63-806.

WATER QUALITY.

Property taxes.

- Exempt property.
- Facilities for water pollution control, §63-602P.

WATER'S-EDGE ELECTION.

Income tax, §§63-3027B to 63-3027E.

WATER SUPPLY AND WATERWORKS.

Property taxes.

- Assessment of operating property of water companies, §63-405.

WEARING APPAREL.

Property taxes.

- Exempt property, §63-602I.

WEIGHTS AND MEASURES.

Fuels tax.

- Method of measurement of gallons received, §63-2404.

WHEELCHAIRS.

Veterans transportation fund, §65-208.

WILDLIFE.

Property taxes.

- Exempt property.
- Land used to protect wildlife and wildlife habitat, §63-605.

WIND ENERGY.

Property taxes.

- Exemptions.
- Operating property of producer of electricity by means of wind energy, §63-602JJ.

WITNESSES.

Declarations for mental health treatment, §66-604.

Income tax.

- Determining correctness of returns.
- Examination of witnesses, §63-3042.

Mental health treatment.

- Declarations for, §66-604.

Y

YOUTH RANCH.

Income tax credit for rehabilitation facilities, §63-3029C.

Z

ZONING.

Property taxes.

- Value of residential property in certain zoned areas, §63-602H.

